



Department  
for Transport

# Independent Complaints Assessors Annual Report, 2015-16

A vertical traffic light with three lenses. The top lens is red, the middle is amber, and the bottom is green. The lights are mounted on a grey pole. The background is a clear blue sky.

**Stephen Shaw  
Jonathan Wigmore**

**August 2016**

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's website. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the Department.

Department for Transport  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR  
Telephone 0300 330 3000  
General enquiries <https://forms.dft.gov.uk>  
Website [www.gov.uk/dft](http://www.gov.uk/dft)



© Crown copyright 2016

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos or third-party material) free of charge in any format or medium, under the terms of the Open Government Licence v3.0. To view this licence visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

To the Permanent Secretary of the Department for Transport, Mr Philip Rutnam.

We are pleased to submit our Annual Report covering the period April 2015 to March 2016.



Handwritten signature of Jonathan Wigmore.

**Jonathan Wigmore**

Handwritten signature of Stephen Shaw.

**Stephen Shaw**

## CONTENTS

Foreword	5
1: Our approach to cases	6
2: Overview of our year's work	9
3: DVLA casework	14
4. DVSA casework	46
5. Other DfT delivery body casework	54
Appendix: ICA terms of reference	60

## Foreword

This is the third occasion on which we have submitted an annual report as the Department's two Independent Complaints Assessors (ICAs), but the first that is specifically addressed to the Permanent Secretary, given our jurisdiction has broadened to incorporate almost all of DfT. This change is more than a cosmetic one. It is a demonstration of the part that independent complaints reviews can play in the overall governance and assurance of government bodies responsible for millions of transactions with citizens and for the expenditure of very large sums of public money.

That said, we are conscious that we see but a tiny part of the work of the Department and its constituent agencies and other bodies. Indeed, what we see is by definition unrepresentative because it is made up of those actions, inactions, or decisions that have left a citizen or customer dissatisfied not only by the original event but also by the DfT's own attempts to achieve a resolution. Nonetheless, complaints do provide a unique insight into practice and culture within all organisations – not least, the extent to which that culture is inward-looking and defensive of existing procedures or customer-focused and designed to drive improvements in performance.

Complaints can also help identify more deep-seated problems. We believe our investigations and those of our predecessor have shone a particular light upon the processes of the DVLA's Drivers Medical Group (DMG), and contributed to the programme of reform that the Agency has undertaken.

The Drivers Medical Group has also been the subject of a systemic review this year by the Parliamentary and Health Service Ombudsman (PHSO). We have been pleased that the PHSO has largely endorsed our own findings on those DMG cases it has considered<sup>1</sup>, but we are concerned that findings in relation to compensation and consolatory payments may be out of line with those that departmental complaints assessors could be expected to award, given HM Treasury guidance.

Independent oversight can be uncomfortable at times for all organisations. It is therefore all the more pleasing to record that relationships with those with whom we liaise within the DfT bodies and our Departmental sponsor remain strong and mutually respectful.

---

<sup>1</sup> Which represent approximately 10 per cent of the DMG cases we review.

## 1: Our approach to cases

- 1.1 We have attached our full terms of reference and associated documentation as an appendix to this report.
- 1.2 An ICA review constitutes the final stage of the Department for Transport's complaints procedure (and one that normally must be completed before the Parliamentary and Health Service Ombudsman will agree to consider a complaint). The ICA decides whether the DfT or one of its delivery bodies has handled a complaint appropriately and whether its decisions and actions have been fair.
- 1.3 The questions addressed in an ICA review are whether or not there has been a failure in service and/or whether or not there has been maladministration in the way the complainant has been treated; and if so, what remedy is appropriate. Thus an ICA review can look at complaints about:
  - bias or discrimination;
  - unfair treatment;
  - poor or misleading advice (for example, inaccurate information);
  - failure to give information;
  - mistaken application of policy or procedure;
  - administrative mistakes;
  - unreasonable delay; and
  - improper or unreasonable staff behaviour, e.g. rudeness.
- 1.4 An ICA cannot comment on legislation or matters of Governmental, Departmental or Agency policy; nor can we question technical decision-making by specialists – most significantly, the clinical decision-making of DVLA doctors making judgements on drivers' fitness to drive. In that respect, our role is more circumscribed than that of the PHSO. However, in practice the bodies we oversee generally welcome an ICA commenting on aspects of their policies if such comments properly arise from our reviews. As we have said before, this more open approach maximises the value of an ICA review and is consistent with the Department's objective of 'learning lessons' from complaints.
- 1.5 We frequently refer to the PHSO 'Principles' (*Principles of Good Public Administration, Principles of Good Complaint Handling, and Principles for Remedy*) in our determinations. We also judge the DfT bodies against their own time targets and standards. More generally, we apply the public law concept of 'reasonableness': looking to see if a decision has been fair in the circumstances.
- 1.6 We are also acutely aware that our reviews – funded as they are from the public purse – should be proportionate to the harm to be remedied. Although public money must always be used properly and in line with Treasury guidance in

*Managing Public Money*, it is a poor use of that money to invite an ICA review when, with a little thought, a DfT body could have settled a minor claim itself.

- 1.7 As ICAs we work from home, and simply have DfT email and postal addresses for convenience and to ensure data security. In general, we work independently of one another, albeit we try to share draft reports and other information as often as possible. Incoming complaints are allocated randomly, unless there is an overriding reason to do otherwise.
- 1.8 Given time and resource constraints, we do not routinely monitor implementation of our recommendations, and discourage follow-up correspondence with complainants and the DfT bodies themselves.
- 1.9 Apart from in the preparation of this annual report, we have little time or capacity to mine the data represented by our reports. Given that those reports constitute many hundreds of thousands of words that detail DfT bodies' engagement with customers and citizens, they have a potential value that is currently not being realised.
- 1.10 The majority of our work concerns the Driver and Vehicle Licensing Agency. The proportion of DVLA cases in our caseload grew substantially in number and proportion during 2015-16.
- 1.11 The other parts of the DfT are responsible for far fewer complaints both in total, and as a proportion of our caseload. In theory, there are more than twenty DfT Agencies and other bodies within our jurisdiction. In practice, the ICAs provided independent reviews in the past year for just five of them: the DVLA, the Driver and Vehicle Standards Agency (DVSA), Highways England (H Eng), the Maritime and Coastguard Agency (MCA) and HS2 Ltd. Amongst other things, there were no ICA referrals of complaints concerning decisions made centrally by the Department or by its caseworking team (DfT-C).
- 1.12 We should emphasise that we conduct what are termed reviews rather than investigations. The difference between the two words may not always be substantial, but it is an indication that we work in the main from the paperwork and other material with which we are supplied, rather than conducting interviews or actively seeking new information. The average time we spend on each review is little more than four hours, and this includes all the associated administration for which we are also responsible. This is of course very different from a PHSO investigation that may take many months to be completed.
- 1.13 The advantage to the complainant and to the Department of our approach is manifest: an outcome is reached much more quickly (and much less expensively). It is for that reason that we have expressed anxiety in our foreword to this report that any gap between the compensation and consolatory payments offered by ourselves and other complaints assessors across Whitehall, and those

offered by the PHSO, may create a financial incentive for complainants to pursue a matter that has already been settled substantively.

- 1.14 We have of course been pleased that the outcome of PHSO investigations has very largely endorsed our own findings on cases. However, the PHSO's relationship with the ICAs or their equivalents across Whitehall should be based on comity and mutual understanding. It was therefore disappointing that the PHSO unilaterally abandoned a protocol that we had been negotiating to achieve those ends.
- 1.15 We were also concerned by one piece of official feedback that criticised our commendation of the actions of a member of staff ("We cannot see what value the comment added to the report for the complainant"). In our view, the purpose of an ICA review is the classic Ombudsman function of providing an objective adjudication on the facts (which may well, on occasions, include praise for staff). Adding value for the complainant is a welcome by-product of an ICA review but not an aim we recognise in itself, or one we intend to incorporate into our way of working.



## 2: Overview of our year's work

- 2.1 In 2011-12, our predecessor received just 57 cases for review. This more than trebled to 199 cases in the following year, once an Agency 'filter' had been removed and it was no longer possible for the DfT bodies to decline a customer's request for an ICA referral. The current ICA system, albeit now with two ICAs sharing the workload, can be dated from this change.
- 2.2 Table 1 shows the number of incoming cases over the three years we have been in post.

**Table 1: All incoming cases, 2013-2016**

	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
DVLA	93	122	169
DVSA <sup>2</sup>	43	38	28
H Eng <sup>3</sup>	12	11	6
MCA	5	1	4
HS2	0	3	1
DfT-C	0	3	0
VCA	1	0	0
<b>TOTALS</b>	<b>154</b>	<b>178</b>	<b>208</b>

- 2.3 Referrals actually fell by 23 per cent in 2013-14, but last year there was a rise of 16 per cent, followed by a further rise of 17 per cent in 2015-16.<sup>4</sup>
- 2.4 As we have already noted, the vast majority of our work concerns the Driver and Vehicle Licensing Agency and the proportion of DVLA cases continues to grow.
- 2.5 Figure 1 shows incoming cases from the DVLA, DVSA, Highways England and the MCA by quarter since 2013-14. The preponderance of DVLA cases is evident. Indeed, in 2014-15 we received 122 DVLA cases, a rise of 31 per cent upon the previous year. In 2015-16, the number of DVLA cases increased to 169, a further rise of 38 per cent.
- 2.6 In contrast, DVSA cases referred for ICA review are in sharp decline, having halved since the beginning of 2012. In 2012-13 there were 57 referrals from the then DSA and VOSA; this fell to 43 in 2013-14 and to 38 in 2014-15. In the past year, the number has fallen by a further 26 per cent to just 28. The majority of these are complaints about the conduct of practical driving tests. A significant

---

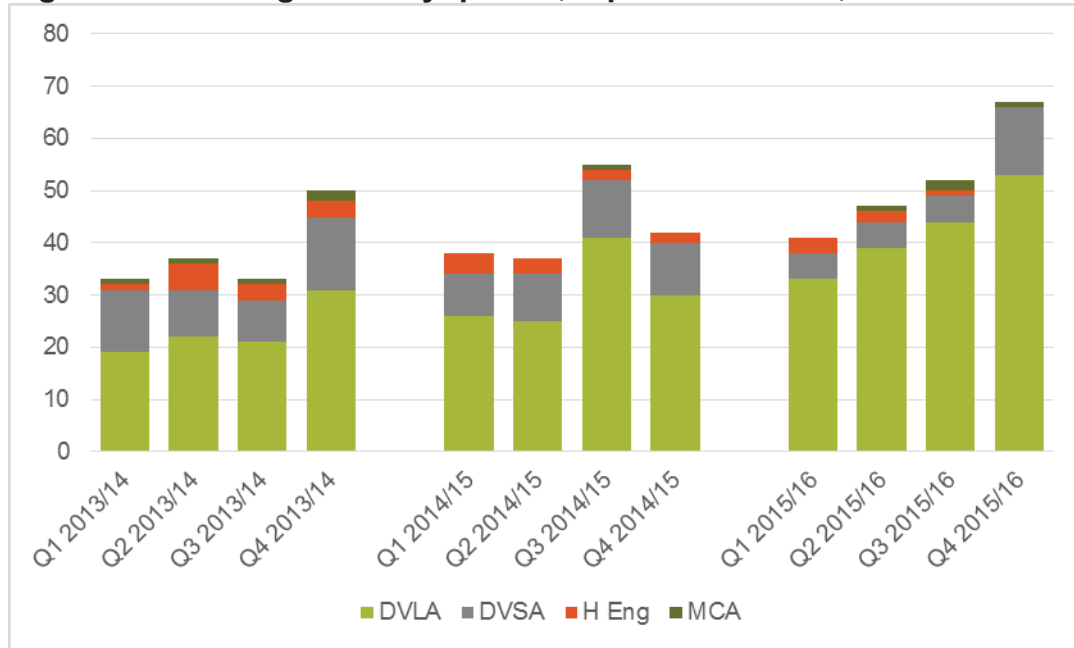
<sup>2</sup> Aggregating in past years the totals for the former Driving Standards Agency and the Vehicle and Operator Services Agency.

<sup>3</sup> Formerly the Highways Agency.

<sup>4</sup> As we finalise this report at the end of quarter 1 of the 2016-17 year, we note a 68 per cent increase in referrals when compared to the same quarter in 2015-16 which points to 2016-17 being another increasingly busy year.

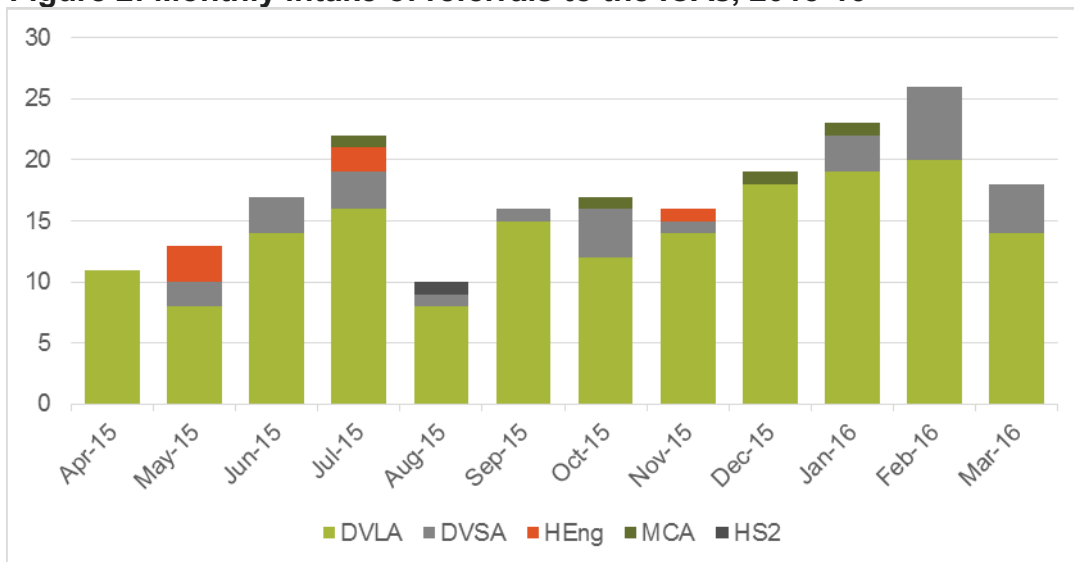
minority are complaints brought by the parent or parents of young people who have failed the test.

**Figure 1: Incoming cases by quarter, top four referrers, 2013-2016**



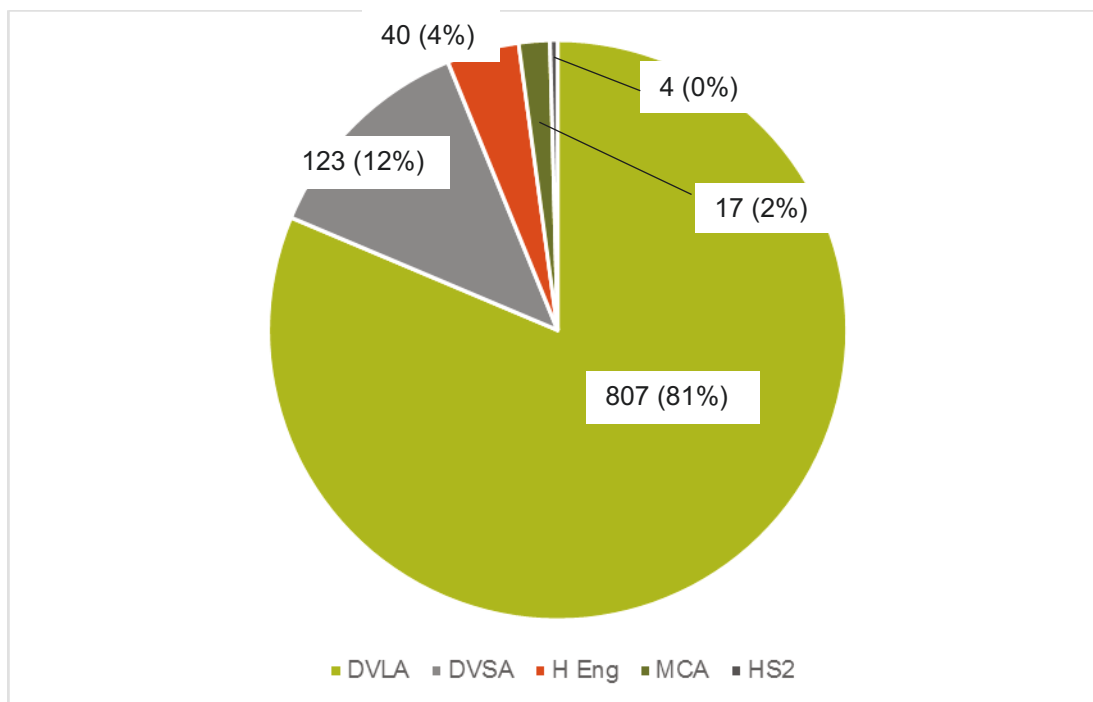
2.7 Figure 2 provides a monthly breakdown of all complaints referred to the ICAs during 2015-16. The monthly average of 17 referrals masks a range of between ten and 26. The majority of referrals are in the second half of the year (43 per cent in April-September, 57 per cent in October-March). These proportions were exactly the same in 2014-15, although we are uncertain if this is just a statistical anomaly or if there is some underlying reason.

**Figure 2: Monthly intake of referrals to the ICAs, 2015-16**



2.8 Figure 3 demonstrates the impact of DVLA cases in a different way by detailing how the time we devote to casework divided up between the DfT bodies that referred complaints to us.

**Figure 3: ICA time spent on cases 2015-16 (hours)**



2.9 Our average case completion time for cases received 2015-16 was 4 hours 24 minutes.<sup>5</sup> This broke down between 4 hours 50 minutes for all DVLA cases, 4 hours 24 minutes for DVSA cases, 4 hours 18 minutes for MCA cases, 4 hours 12 minutes for the single HS2 Ltd case, but 6 hours 40 minutes for the six Highways England cases (all of which were upheld to some degree).

2.10 The additional time on Highways England cases reflects their inherent complexity, and our relative lack of familiarity with the subject matter. Last year four of the eleven Highways England cases concerned vehicle damage caused by road conditions; no such cases arrived this year. Although it was not the case last year, in general MCA cases have also taken significantly longer than the overall average.

<sup>5</sup> This refers to cases from all quarters completed during the year rather than completion times for the cases received in the year.

**Table 2: ICA case handling, 2015-16**

<b>Period</b>	<b>All cases rec'd</b>	<b>All cases completed</b>	<b>Average case completion time (hrs: mins)</b>	<b>Average time from referral to completion (weekdays)</b>
Apr-Jun 15	41	45	5:32	23.5
Jul-Sept 15	48	38	5:04	24.6
Oct-Dec 15	52	50	3:57	24.7
Jan-Mar 16	67	68	4:12	23.1
<b>TOTAL</b>	<b>208</b>	<b>201</b>	<b>4:36 (overall)</b>	<b>av. 23.9</b>

2.11 In 2014-15, average case completion time was 5 hours 32 minutes. We have thus achieved a 17 per cent reduction in the time we devote to each case (and hence the cost to the public purse) this year. This follows an earlier reduction of 11 per cent comparing 2014-15 with 2013-14.

2.12 We are very proud of this achievement. However, we counsel against any expectation of continued reductions below four hours. Given there are fixed costs associated with each case (largely of an administrative nature), even the simplest complaints take some time to resolve. Moreover, the figures necessarily do not reflect those cases that remained open at the end of the 2015-16 year, some of which had proved especially complex and time-consuming<sup>6</sup>.

2.13 To some degree, a change in the make-up of DVLA cases may help explain the reduction in average time taken. There has been a growth in enforcement cases and some reduction in the complexity of complaints involving the Drivers Medical Group, if not the volume. The average time required for Drivers Medical cases has fallen accordingly – from just over eight hours to seven hours 9 minutes.

2.14 Of the 208 cases received in 2015-16, twelve took longer than ten hours to complete. Of these, six were cases involving the DVLA's Drivers Medical Group, two were concerned with DVLA enforcement activity, and two were related to the disclosure of keeper data. There were two DVSA cases that took more than ten hours: one concerned driver accreditation and the other an accident occurring in a DVSA office.

2.15 The two longest cases (16 hours 49 minutes and 15 hours 45 minutes) both concerned complicated disputes arising from the disclosure of keeper data to, in one case a private parking firm, and in the other, a company enforcing against trespass.

2.16 Table 2 also shows that the average time from referral to completion was just under 24 days, an increase of a day and a half from 2014-15 which reflects to

<sup>6</sup> The figure of average case completion of cases to date in 2016-17 is four hours and forty nine minutes.

some extent the impact of our increasing caseload. However, the fact that demand has more less been met by capacity throughout the year reflects the advantage of the DfT's approach of employing more than one ICA.

2.17 Only in very exceptional circumstances is our target of completing cases within three months of referral not achieved. We have received no complaints of delay in the year.

2.18 Overall, we think the figures convincingly demonstrate that the ICA model for settling grievances is a very responsive one and, the Highways England cases aside, case handling time is remarkably consistent.

2.19 Table 3 shows the outcome of all cases referred and closed during 2015-16. It is conventional for Ombudsman and complaints assessors to aggregate full and partial upholds to give an overall uphold rate. In our case, this would result in an uphold rate of 37 per cent. This is in line with last year's outcome.

2.20 However, as we have done before, we strongly advise against a simple analysis of these figures. One complaint might be upheld on some trivial aspect of the overall matter; another might not be upheld in the sense that the decision complained about was reasonable notwithstanding that the review has revealed significant flaws.

2.21 We provide more a detailed breakdown of outcomes in the following Casework sections of this report.

**Table 3: Outcome of cases referred 2015-16**

	<b>Upheld</b>	<b>Partially upheld</b>	<b>Not upheld</b>	<b>Total completed</b>
<b>DVLA</b>	20 (12%)	49 (29%)	98 (58%)	167
<b>DVSA</b>	3 (11%)	2 (7%)	23 (85%)	28
<b>H Eng</b>	4	2	0	6
<b>HS2</b>	0	0	1	1
<b>MCA</b>	0	1	3	4
				206 <sup>7</sup>

---

<sup>7</sup> Two of the 208 cases we received in the year (both from the DVLA) remained deferred with the agreement of each complainant at the time of writing this report.

### 3: DVLA Casework

- 3.1 Table 4 and Figure 4 compare DVLA complaint areas this year and last. It will be seen that the most significant changes have been the increase in enforcement cases and complaints relating to vehicle excise duty (VED).
- 3.2 Complaints relating to Drivers Medical Group have also increased, although they have fallen as a proportion of all DVLA cases.
- 3.3 Although the number of DMG referrals has increased, the number of vocational drivers complaining to us remains relatively low. The potential or actual loss of a licence on medical grounds is of course a major source of anxiety for every driver, but the impact on those who make their living through driving for a living speaks for itself.

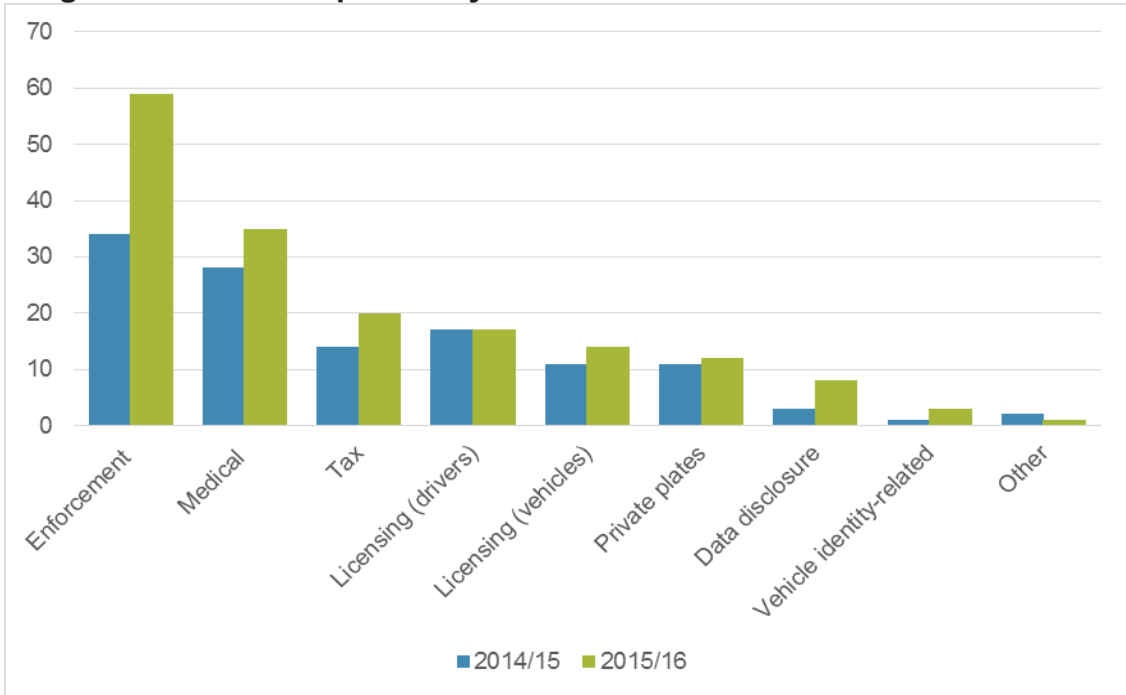
**Table 4: DVLA complaints**

Business area	2014/15		2015/16	
	Number	%	Number	%
Vehicle licensing penalties (including clamping and impounding)	31	25%	52	31%
Drivers Medical Group	28	23%	35	21%
VED, rebates and administration	14	11%	20	12%
Driver licensing, general	17	14%	17	10%
Vehicle registration general	11	9%	14	8%
Cherished plates and number transfer	11	9%	12	7%
Disclosure of keeper information to private parking company	3	2%	8	5%
Continuous insurance enforcement	3	2%	7	4%
Vehicle identity-related	1	0.8%	3	2%
Other	2	2%	1	0.6%
<b>Total</b>	<b>122</b>		<b>169</b>	

- 3.4 In total, some 18 cases (11 per cent) were fully upheld compared with 9 per cent in 2014-15. The overall uphold rate (full and partial upholds) was slightly above the 2014-15 figure at 41 per cent.
- 3.5 As in previous years, DMG cases are the most likely to be *fully* upheld, with no discernible pattern across other categories. The overall uphold rate (fully and partly upheld) for DMG cases remains very high, albeit there has been a slight fall from 68 per cent to 65 per cent in the past year.
- 3.6 We are aware of recent improvements in DMG processes and the recruitment of additional staff, but the continuing high uphold rate and increasing number of

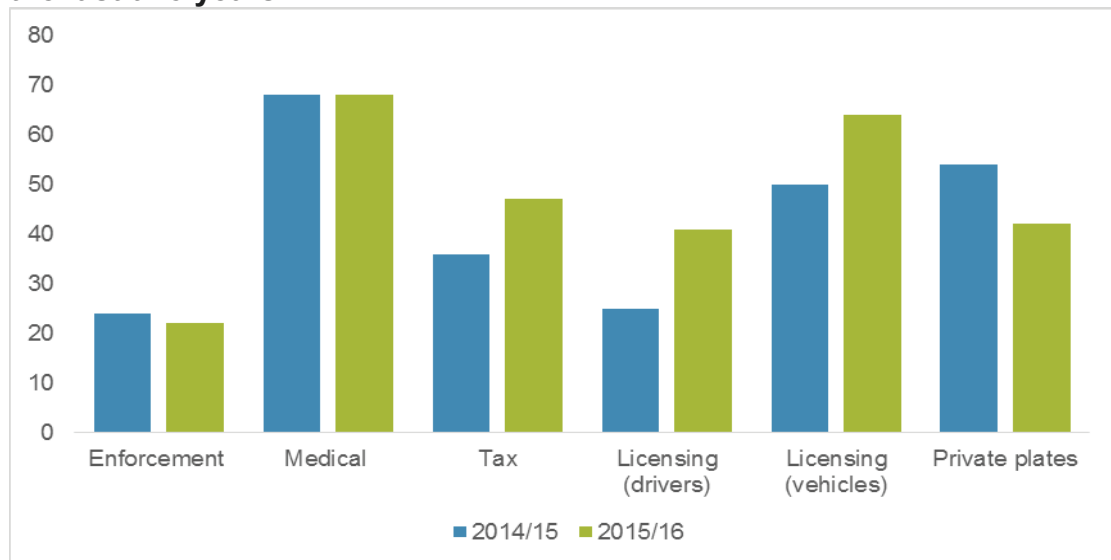
referrals seems to show that these changes have yet to be reflected in the cases we are seeing.

**Figure 4: DVLA complaints by business area**



3.7 This is illustrated in Figure 5 which shows the ICA uphold rate across the main categories of DVLA casework, highlighting the high rate of fully and partially upheld Drivers Medical cases.

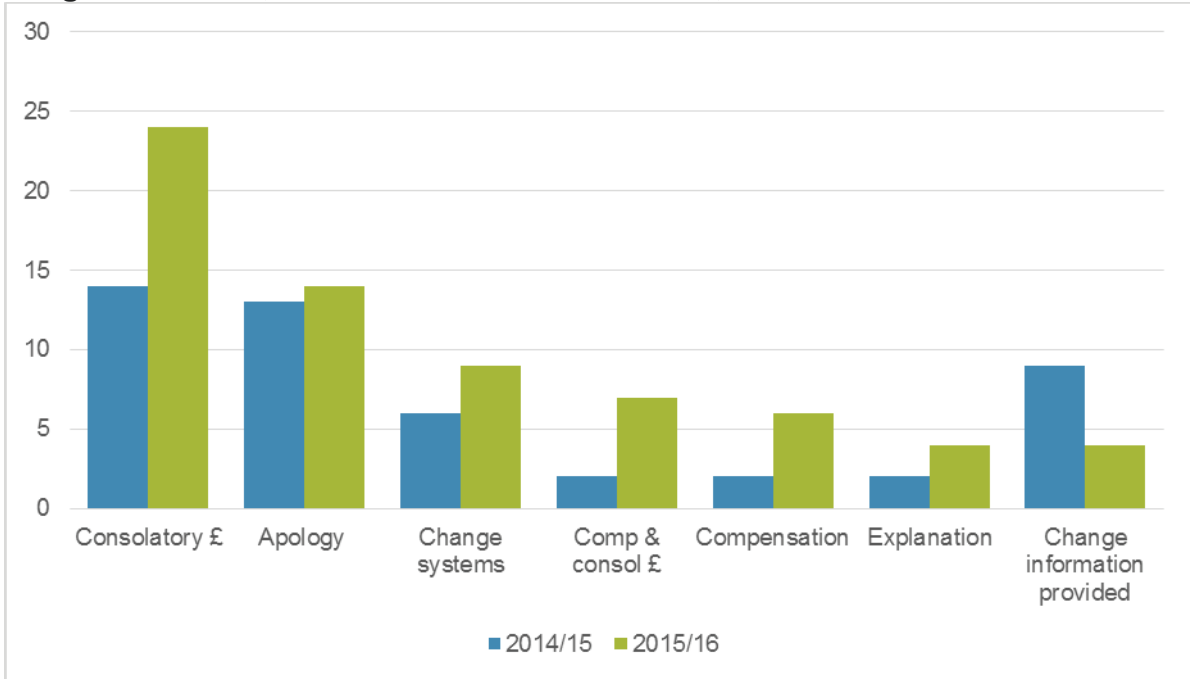
**Figure 5: Full & partial uphold percentages in categories of DVLA case over the last two years**



3.8 In figures which mirror the uphold rate, in almost 41 per cent of DVLA cases some form of remedy was proposed by the ICA (slightly more than the 39 per cent in 2014-15).

3.9 Figure 6 illustrates our main recommendation areas in DVLA cases.

**Figure 6: DVLA, main recommendation areas, 2014-15 & 2015-16**



3.10 The most frequent forms of redress recommended by an ICA are the making of a consolatory payment in recognition of maladministration, or the offering of an apology.

3.11 We also recommend compensatory awards where there is clear evidence of material loss as a consequence of maladministration.

3.12 The DVLA’s business touches the lives of the great majority of adults in this country at some time during the year. We welcome the greater automation of transactions, but many still involve the citizen in actively engaging with the Agency to ensure that the driver and vehicle registers remain up to date. We therefore pay particular attention to the information provided to the public about their rights and responsibilities. The recommendation category of ‘Change information’ reflects instances where we believe that information is not readily available or is poorly or incompletely drafted.

3.13 We have earlier presented statistics on our own performance in terms of the time we devote to all cases. Table 5 and Figure 7 disaggregate the data for categories of DVLA casework and feature the 167 cases we completed which



arrived 2015-16.<sup>8</sup> The overall average time taken per DVLA case was 4 hours 50 compared to 5 hours 32 minutes in 2014-15. The gross time taken on DVLA cases rose by 21 per cent from last year (from 664 to 807 hours).

- 3.14 Although only seven cases concerned the disclosure by the DVLA of keeper data (in each case to a private parking company) they were particularly complex. This was in part due to the high volume of correspondence fielded by several business areas within the Agency and the complex and changing legal position.<sup>9</sup>
- 3.15 Complex cases involving the registration of historic vehicles have taken longer than expected to complete. Complaints about ‘road tax’ (vehicle excise duty or VED) – usually claims for refunds – have increased but are not usually complex. Automation of this part of the DVLA’s activities should mean a reduction in this category of complaint in the future.

**Table 5: Average time/case devoted in main DVLA casework areas**

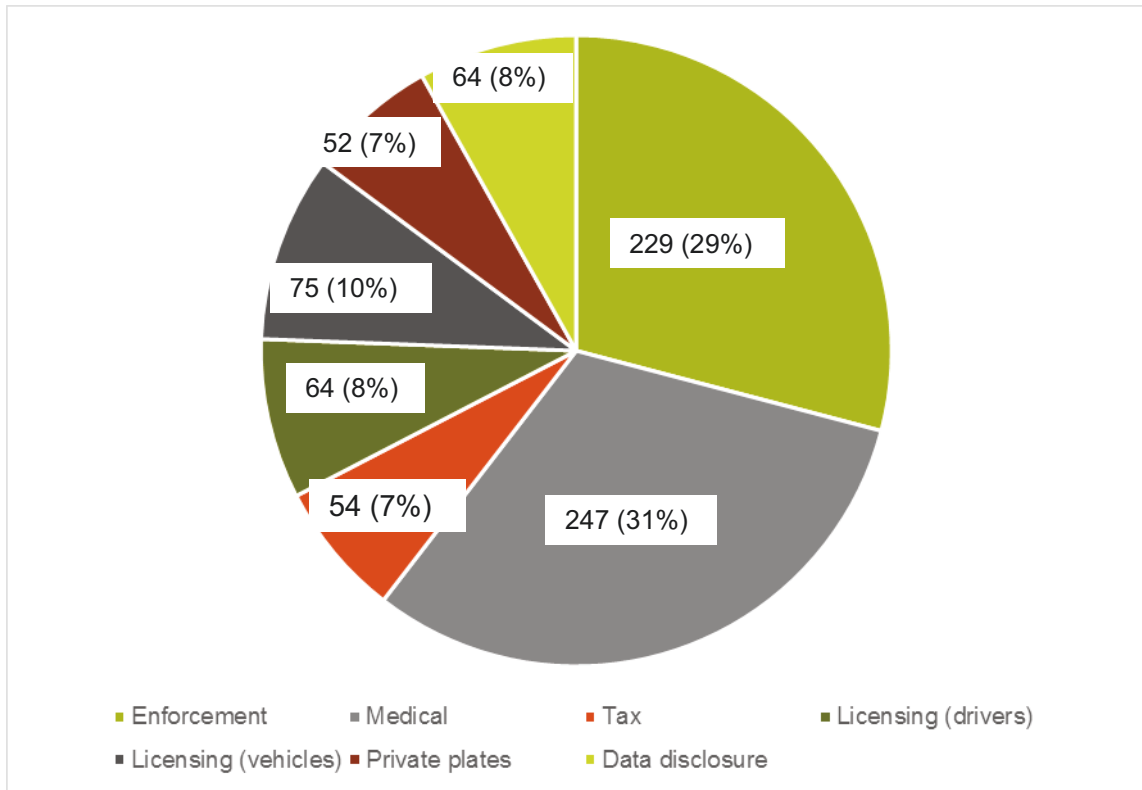
<b>Business area</b>	<b>Average time per case (hours: minutes)</b>
Data disclosure	9:10
Medical	7:09
Licensing (vehicles)	5:23
Private plates	4:23
Enforcement	3:53
Licensing (drivers)	3:49
Tax	2:52

- 3.16 In Figure 7 (overleaf) we illustrate the time we have spent on the main casework areas in our 2015-16 postbag. Unsurprisingly, it reflects the significant representation of enforcement and Drivers Medical casework. These cases originate in two areas of the Agency’s operations that have a significant impact on frequently unwilling customers.

<sup>8</sup> We therefore include some completions in the 2016-17 year.

<sup>9</sup> In particular *Duff v Secretary of State for Transport*, June 2015 which established that the DVLA could require companies enforcing against trespass to be a member of an accredited trade association if they are to have access to its vehicle keeper register.

**Figure 7: Total time devoted to main DVLA casework areas (hours)**



3.17 In the pages that follow we set out illustrative examples of our DVLA casework, categorised by theme. We begin with an issue that should be at the heart of the work of all public bodies: ensuring that citizens are treated equally.

**(i) Equalities**

3.18 Six of the eight cases we received where discrimination was alleged concerned the DVLA. Of the three discrimination complaints about the Drivers Medical Group, two alleged that necessary adjustments had not been made to enable the driver to undertake vision testing at the DVLA-appointed opticians, Specsavers.

3.19 A theme of these cases was that the DVLA did not always address the complaint that it was in breach of its statutory equality duties or refer to the actions it was taking to reduce discrimination. We welcome the Agency’s consideration of our recommendation that in its forthcoming review of its Equality Objectives and Plan, all complaints which allege discrimination should be retrievable from its case management system and analysed. This analysis should be, in our view, part of the Agency’s assurance process that it is meeting its equality objectives.

## Poor handling of a complaint of a breach of the Equality Act

**Complaint:** Ms AB, who identified as transgender, attempted to notify the DVLA of her change from male to female name in respect of three vehicles that she was the keeper for. She complained that the DVLA had failed to process the logbooks correctly and reissue them in her correct name. Instead, the DVLA had mistakenly interpreted her notifications as representing a change of keeper in two out of the three cases. In the third, considerable delay occurred while the DVLA processed the name change. Ms AB noted that she had had no difficulties whatsoever in changing the details on her driving licence. She stated: *“As is the case for most transgender people, it is very painful to be addressed by the wrong name and gender.”* Dissatisfied with the initial responses of the DVLA, Ms AB notified the Agency that she was considering taking legal action as the DVLA’s handling of the matter *“confirms a systemic failure in dealing with people who change their name in this way, something which is calculated to negatively impact on transgender people. Not only is this unacceptable, it is unlawful.”* She alleged that the DVLA’s administration amounted to a breach of the public sector equality duty enshrined in section 149 of the Equality Act 2010.

**Agency response:** After a delay the Agency replied apologising for its lack of response and assuring Ms AB that logbooks had been issued correctly for all three of her vehicles. She was told that the mistake had been down to human error and had been taken up with the relevant managers. In response to Ms AB’s further complaint the Agency explained that the clerks inputting data from logbook notifications had no access to the drivers’ register and therefore would not ordinarily cross-refer while processing cases. The DVLA did not judge that the error had represented discrimination. In a further response the DVLA apologised and emphasised that no disrespect had been intended. It undertook to reply to a series of questions which Ms AB has asked relating to the claim she was contemplating bringing against it.

**ICA outcome:** The ICA was disappointed to note that some five months after Ms AB had submitted the notifications, one of the logbooks had still not been issued to her. After his intervention the DVLA rectified this and offered its further apologies. The ICA established that in all likelihood all three notifications had been processed by the same clerk. The ICA considered the possibility that the individual clerk had deliberately discriminated against Ms AB. He concluded that deliberately mis-processed cases would inevitably be returned to the DVLA for correction, investigation and management action. He also noted that over 12 million transactions had been manually processed from paper documents in 2015 with an estimated 60,000 errors over a five-month period based on an overall accuracy rate of 98.4%. The ICA noted that DVLA officers will wherever possible try to avoid rejecting transactions. In practice, many V5C notifications where no new address is added but the keeper’s first name changes will be intra-family keeper changes, for example from a parent to a son or daughter. In Ms AB’s case it appeared that an assumption had been made that the previous keeper name and the new keeper notification related to two different people. The ICA also observed that partially completed notifications are commonplace and concluded that it was more likely than not that the clerk had assumed the logbooks had been partially completed.

The ICA emphasised that however well intended the DVLA's administration had been, the outcome had been distress and delay which had impacted on Ms AB's plans to sell the vehicles. He quoted from NHS guidance on getting pronouns and gender terms right and the Ombudsman principle that public bodies should understand and respect the diversity of their customers and ensure equal access to services. He also referred the agency to Government Equalities Office guidance "*Providing services for transgender customers*"<sup>10</sup> which emphasises the understandable aspiration of transgender people to have "*business as normal*" dealings with services. The ICA did not conclude that discrimination had occurred.

Turning to Ms AB's complaints about the DVLA's handling of her correspondence, the ICA agreed that the initial response with only a qualified and generic apology had been insufficient. The ICA accepted the overarching finding of the DVLA investigation which was that human error was the root cause of the poor administration. He also considered that the lack of awareness of transgender issues on the part of the clerk concerned was another root cause rather than a calculatedly discriminatory system or individual prejudice.

The ICA agreed with Ms AB that the equality aspects of her complaint had not been addressed properly. In contrast, during the ICA review the DVLA provided details of its equality and diversity training and policies, support groups, customer insight work, supporting transgender staff policy and other initiatives in the equalities field. It outlined its equality impact assessment work in individual business areas, and the role of its diversity team in supporting implementation. The Agency also explained that there was no current process to isolate and analyse complaints relating to direct and/or indirect discrimination.

The ICA expressed concern that complaints of discrimination against people with protected characteristics were not discernible within the DVLA systems as part of the monitoring of its main equality objective ("to improve information and guidance"). He welcomed the DVLA's undertaking to consider reviewing the recorded complaint categories to include direct or indirect discrimination. He also welcomed the Agency's meetings between the equalities team, the business area and the complaints team to discuss the case. An initial outcome was a change in the online advice to customers changing their names to minimise the potential for similar errors to occur. The ICA pointed the DVLA to the more advanced Department for Work and Pensions equality programme which addresses the injustice experienced by people covered by the broad term transgender in a far more direct way.

The ICA was unable to endorse Ms AB's claim for a significant cash remedy given the applicable Treasury and DfT guidance. He recommended that a consolatory payment of £100 should be made for the inconvenience and frustration caused by the processing errors and the many delays which had beset the case. He also advised Ms AB how she could claim for losses related to the delays in issuing logbooks. He also

---

<sup>10</sup> <https://www.gov.uk/government/publications/providing-services-for-transgender-customers-a-guide>

recommended that a written undertaking was provided to Ms AB by the DVLA to provide appropriate training to its staff in relation to the needs of trans people when they interact with the Agency. And he recommended that the DVLA should ensure that complaints were made integral to the changes which will follow its imminent review of its equality plan in the following ways:

- By adding indirect and direct discrimination to its complaint categorisation system and building the resulting intelligence into the monitoring arrangements
- By reviewing the support available to its Complaints Team in addressing complaints of discrimination to ensure that investigations are sufficiently robust and remedial measures mesh with other work streams related to countering discrimination.

Finally, he recommended that the DVLA should respond to the series of questions put to it by Ms AB in her correspondence.

### **Poor handling of the case of a driver whose disabilities meant that she could not attend vision tests**

**Complaint:** Ms AB had been diagnosed with a benign brain tumour that affected her vision, and was registered disabled with systemic sclerosis. She complained about the DVLA's handling of her reapplication for her driving licence. She highlighted the lack of assistance she had received from the Drivers Medical Group when she said she was disabled and would have difficulties being accommodated in Specsavers, the DVLA's appointed optician. Ms AB was also shocked and deeply distressed by the content of one of the standard letters sent to her that did not meet the circumstances of her case and seemed to her to imply that she had developed a malignancy. She was also critical of the DVLA's suggestion that she withdraw her application and about the basis of its decision-making in her case.

**Agency response:** In the first instance DMG replied to Ms AB's correspondence about the difficulties she foresaw in attending Specsavers. Ms AB required access to a toilet and a drop-off point directly in front of the opticians in order to ensure her comfort over the two hour span of travelling there and back and undertaking the tests. Ms AB was sent a standard letter advising her that it might be better for her to withdraw her application and reapply when she had her doctor's or consultant's support. This letter caused Ms AB considerable distress as she assumed that her consultant had disclosed a new development in her health involving her brain tumour of which she was not yet aware.

Ms AB attended an appointment at a branch of Specsavers she had identified as being able to meet her needs, but failed to meet the visual field standard in the tests there and her licence application was refused. During this process the DVLA attempted to address Ms AB's concerns and answer her questions, but it did not deal with her complaint that it had failed to accommodate her disability. The DVLA agreed to re-open Ms AB's case after she provided evidence from her consultant that she met the standard. But at the time of the ICA review she had yet to attend the required

number plate reading test. Ms AB initiated legal proceedings to force the DVLA to restore her entitlement, and then withdrew them when she realised that her consultant would need to cancel a clinic in order to attend court.

**ICA outcome:** The ICA referred to the Equality Act, the DVLA's equality duties, the United Nations Convention on the Rights of Disabled People and relevant Ombudsman Principles. While he agreed with the DVLA that the fitness standards themselves were not negotiable, he considered the requirement to attend an opticians that lacked the necessary facilities for a disabled person was a one-size-fits-all approach that could amount to indirect discrimination. The ICA expressed concern that the INF94 leaflet giving information to drivers about medical investigations, and the relevant medical questionnaires, did not invite people to raise any potential difficulties they might experience in attending a fitness assessment. This was disappointing given the many disabled people who relied on the DVLA to investigate their fitness fairly. The ICA pointed to the importance of mobility in leading a full and engaged life and argued that the DVLA, as a public body, had a duty to ensure that the rights of disabled people were protected in this area. In response to his comments, the DVLA undertook to review the wording of its INF94 leaflet.

The ICA upheld the complaint that the DVLA's response to Ms AB's difficulties attending the opticians was unreasonable and unfair. However, he regarded the DVLA's administration of its medical investigation as reasonable and in line with the Agency's published policies. Finally, the ICA upheld the complaint that the handling of Ms AB's concerns had not met a reasonable standard. The ICA recommended that the Agency refer her case to the officer reporting to the chief executive on equality matters. That officer should then inform Ms AB of any changes to the Agency's working practices to be put into place as a result of her experience. Given the distress caused to Ms AB by the standard letter, the ICA also recommended that the DVLA should adopt a different form of words when new information was supplied by an applicant rather than a doctor. Finally, given the failings he had identified through his review, the ICA recommended that Ms AB receive an apology from the chief executive of the DVLA.

### **A customer with mental health problems who felt that contact centre staff had been rude and had discriminated against her**

**Complaint:** Miss AB, who identified herself as transsexual and suffering from acute social anxiety, complained that she had received discriminatory treatment when she telephoned the DVLA for help in setting up a direct debit after she had lost her V5C. She said that staff had assumed she was male and had refused to make a reasonable adjustment for her mental health disability in line with the Equality Act. She complained that the DVLA would not provide a 16 digit code to her by telephone to enable her to tax the vehicle online.

**Agency response:** The DVLA gave practical advice about how to tax, and outlined its training strategy for ensuring staff were aware of the needs of disabled people and acting in line with the Equality Act. Miss AB found this inadequate and in further

correspondence complained that an inadequate explanation of policy had been given; mental health issues had not been seen as a disability; and the options offered by DVLA staff for resolving matters had been insulting and discriminatory. In a further response the DVLA apologised for its staff's errors in referring to Miss AB as "Sir" and reiterated the limits within which contact centre staff were working in terms of their ability to give out information like 16 digit codes by telephone.

**ICA outcome:** The ICA reviewed all four calls, and agreed that there had been little staff could do to help given the restrictions on giving out information by telephone. Shortly afterwards Miss AB had located her V5C and successfully taxed her car. The ICA did not agree with Miss AB that staff's inability to depart from established DVLA practice amounted to discrimination. While he could not make any legal determination about the Equality Act complaint, he considered that the various alternative options offered by DVLA staff were accessible to Miss AB despite her disability.

However, in terms of customer service the ICA noted that two of the four operators had referred to Miss AB as "Sir" despite being corrected and had not apologised. He referred the DVLA to the Government Equalities Office advice 'Providing services for transgender customers: A guide' and to guidance from the Gender Identity Resource and Education Society (GIREs). He felt that good customer service would have included a clear apology for the mistakes during the calls.

The ICA recommended that the DVLA give high priority in training to handling calls from transgender people. He was pleased to learn that this recommendation will be addressed with all the DVLA's telephone advisers. The ICA judged that Miss AB's complaint that the DVLA had failed to recognise her mental health issues as a disability was unfair on the staff she spoke to. Having listened to the calls the ICA judged that staff had difficulties in knowing how to help Miss AB, but in all fairness there was little more they could do than inform her of her options.

The ICA concluded that complaints of discrimination and of Equality Act breaches should be aggregated and integrated within the Agency's Equality Strategy. He recommended that his review be referred to the director reporting to the chief executive on equality issues to consider changes to the way the Agency handles complaints of discrimination. Finally, the ICA identified shortfalls in the handling of Miss AB's complaints. He felt that it should not have taken an ICA referral for the outcome of a senior review of the four calls to be relayed to her. And while it is not the function of complaints staff to assess Equality Act compliance, he said they must feel able to investigate, and respond fully to, complaints of discrimination. He expressed concern that complaint handling staff were not supported sufficiently in their handling of allegations of discrimination. He therefore recommended that steps should be taken to improve complaint handlers responses to allegations of discrimination.

## **(ii) Drivers Medical**

- 3.20 Drivers Medical Group cases continue to present challenges to the Agency and to ourselves. At the core of many of them is the balance between the individual's need to continue driving and the Agency's statutory responsibility in the interests of public safety to assess fitness to drive. While we spent less time on these cases in 2015-16 than the year before (185 hours compared to 221) the number went up from 19 to 34 cases with uphold rates in both years in the mid 60 per cent range compared to 34 per cent for other DVLA cases.
- 3.21 Themes have included: unfair and poorly communicated requirements on elderly drivers wishing to re-apply for their licence after failing driving assessments; the lack of clear guidance for drivers who wish to complain about the conduct of a DVLA-appointed clinical or driving assessment; poor quality local complaint investigations undertaken by DVLA-appointed assessors; insufficient evidence to support revocation on vision grounds; and cautious and delay-ridden consideration of head injury cases where a risk of seizure needs to be established.

### **An elderly driver with carer duties whose licence was revoked without warning**

**Complaint:** Mr AB, who is in his eighties, complained that for two months DMG did not acknowledge the vision tests he had sent and then suddenly, without warning, revoked his driving licence. This was a significant blow for Mr AB who relied on being able to drive to care for his disabled daughter. He further complained that the DVLA ignored a third sight test he provided, repeatedly sent him the same request for information, and unreasonably made him re-apply from scratch after he had been unable to attend an eye test because he was about to undergo cataract surgery.

**Agency response:** The DVLA eventually entered into protracted correspondence with Mr AB after he involved the Prime Minister in his complaint. By assigning his case to a competent member of the complaints team, the DVLA put right some of the earlier shortcomings in its correspondence. After Mr AB had attended a further eye test some ten months after he had first submitted evidence, the DVLA restored his driving licence.

**ICA outcome:** The ICA agreed with Mr AB that the Agency's failure to inform him that he was under medical investigation, only to revoke his licence out of the blue, represented very poor administration. In his review the ICA explained in detail why the visual acuity standards applied by the DVLA had not been met by the eye tests Mr AB had initially provided – this was why his entitlement had been suddenly revoked. The ICA noted that a third eye test commissioned by Mr AB had showed that he actually met the visual standards, and the ICA was very critical of the DVLA for overlooking it. The ICA commended the member of the complaints team who took over Mr AB's case some three months after his initial correspondence. He did not uphold Mr AB's complaint that the requirement to re-apply for his licence had been unreasonable. However, given the failings he identified, the ICA concluded that the



Agency should make a consolatory payment of £100 to Mr AB in recognition of its poor service. On a positive note, the ICA noted that the Agency had apologised for its delays, eventually affording Mr AB's case priority status, and had made improvements to its service to ensure that early-stage complaint responses were of a much higher standard.

### **Considerable delays which prevented a newly qualified ambulance driver from starting work**

**Complaint:** Miss AB, who needed a C1/D1 licence in order to commence work in seven months' time as an ambulance paramedic, complained that the DVLA's handling of medical enquiries had been grossly delayed and incompetent. Miss AB had been the victim of an assault resulting in a head injury over two years earlier and had been observed in the emergency department by medical staff as having a "seizure-like event" immediately afterwards. However, no defining marker for a seizure was ever established during Miss AB's brief admission or in the outpatient MRI, EEG and CT scanning. She had therefore not been referred for neurology follow-up and had required no anti-seizure medication over the two and a quarter year period following the assault.

**Agency response:** The DVLA had undertaken medical enquiries many months after the assault and been content to relicence Miss AB on her ordinary driving licence (for which the fitness requirements were considerably less strict than for the Group 2 licence which she would need to work as a paramedic). When Miss AB applied for the Group 2 licence the Agency detected disparities in her GP's account of the seizure - like events. Further information was sought from the GP.

Unfortunately in its hospital medical enquiries the DVLA focused on an irrelevant hospital admission despite Miss AB's repeated attempts to deflect it from this pointless avenue of enquiry. Meanwhile its medical advisers considered referring the case to a member of its specialist advisory panel if the evidence did not exclude the likelihood that the seizure had been unprovoked.

Miss AB and her lawyers pressed the Agency to expedite her case. Although it was placed on priority at an early stage, the DVLA's enquiries were unsuccessful in their aim of obtaining all the medical records related to the head injury. Eventually Miss AB obtained the opinion of a professor of neurosurgery privately. He confirmed that she had no risk factors for long-term seizures and had in all likelihood a lower likelihood of suffering a seizure than the general population given the normal MRI scan of the brain and EEG. After further enquiries were made of the professor and the involvement of her MP, Miss AB was granted a provisional group 2 licence.

**ICA outcome:** The ICA noted that the unreliability of the GP's evidence had been a factor in some of the delays but that in itself should have triggered an earlier request for the hospital records relating to the head injury. The ICA was critical of the fact that, despite Miss AB's and her lawyer's dogged pursuit of the Agency, it still insisted on seeking irrelevant medical records. He was also critical of the fact that a professorial

opinion that Miss AB had low risk of suffering seizures had not triggered a licensing decision quicker. The ICA regarded the DVLA medical advisers' handling of the case as extremely cautious. He concluded that the case had revealed an administrative assumption that drivers will have consultants. Paradoxically, Miss AB's lack of a consultant disadvantaged her even though it was a marker of the fact that she had nothing wrong with her. In the end she had needed to buy in an opinion that she did not need a consultant.

The ICA noted that the DVLA's own medical enquiries looked set to continue for much longer before Miss AB obtained a professorial opinion, by which time she had been prevented from starting work by several months. He recommended that her claim for compensation should be sympathetically considered along with reimbursement of her legal and private medical costs. He also recommended that the Agency should consider warning drivers who had suffered head injuries that the enquiry process could take considerably longer than the advertised timescale due to the very high standard of evidence required by DVLA medical advisers, evidence which had simply not been available in Miss AB's case. Finally, he recommended that Miss AB should receive an apology from the DVLA and an explanation of the steps it intends to take to prevent a recurrence of the unfortunate events of her case.

### **Poor handling of the concerns of a driver who lost her licence after failing a driving assessment**

**Complaint:** Miss AB, who is nearing the age of 90, complained that the DVLA had unfairly revoked her driving licence after she had failed a driving assessment. The DVLA investigation had been prompted by a police report of a learner motorcyclist swerving and falling off his bike. Miss AB was waiting to join the carriageway nearby. No collision had occurred and Miss AB was consistent in her account of the incident over the two years she had dealt with the DVLA. She was clear that she had been stationary when the motorcyclist had swerved and fallen off. Miss AB passed the required medical tests and was sent by the DVLA on a driving assessment. She complained immediately after the assessment that the test had been unfair and unreasonably stressful, with the assessed drive far exceeding the expected 40 minutes. The process had been exhausting and the semi-rural conditions in which she had driven had not resembled her usual Inner London route. She failed the assessment and had her licence revoked. The DVLA refused her a re-assessment without the approval of her GP. Miss AB and her GP complained that the doctor could not comment on the driving assessors' verdict on Miss AB's fitness to drive.

**Agency response:** The DVLA repeatedly referred Miss AB to the outcome of the assessment that she had "*problems with depth perception/judging distances and positional sense/spatial appreciation*". This was seen as pointing to a debarring medical condition. The case was reviewed by the DVLA's senior medical adviser who upheld the position that Miss AB needed her GP's approval before a new driving assessment could be considered.

**ICA outcome:** The ICA noted that the police officer who reported Miss AB to the DVLA could only provide a hearsay account of her vision being questionable. The ICA also pointed to an inaccuracy in the driving assessors' comments. However, he noted that the revocation decision had been made on the basis of a professional driving assessment and had been reviewed by two DVLA medical advisers. He did not think, therefore, that the decision was open to question through independent review. The ICA noted an area of similarity with the High Court case of *Hitchen* (R (Hitchen) v Oxford Magistrates Court (2015) EWHC 271). Like Mrs Hitchen, Miss AB had difficulties with the unfamiliar context of the driving assessment. The points Miss AB made about the different driving skills needed where she lived and the other factors bearing on her test performance were very plausible. The ICA felt that active consideration should have been given by the DVLA to obtaining further evidence from the driving assessors based on Miss AB's concerns about the test conditions. He expressed disappointment that the letter Miss AB wrote immediately after the assessment had been ignored.

The ICA concluded that some safeguard against errors by the driving assessors should have been available. He recommended that the DVLA develop and publicise a clear approach to dealing with complaints concerning the conduct and validity of driving assessments. He also recommended that the Agency should review its standard approach that drivers whose licences are taken away after driving assessments must enlist their GP in support of a re-application. He recommended that Miss AB's request for a further driving assessment should be reconsidered, and explicit consideration in the outcome letter should be given to her account of the original incident and of the driving assessment. Finally, the ICA recommended that the DVLA apologise to Miss AB for the poor quality of some of the correspondence after her licence was taken away. The ICA noted that DMG had made great strides forward in its complaint handling in the last year. He reminded it of the simple quality measure, of thinking about how one would feel, walking in the shoes of the customer, to receive letters which do not engage with the reasonable points being repeatedly made.

### **Mis-recording information from the courts**

**Complaint:** Mr AB said that he had been banned from driving because of excess alcohol. He had been wrongly coded as a High Risk Driver and, as neither the DVLA nor HMCTS would accept responsibility, he had been effectively disqualified for five months longer than he should.

**Agency response:** The DVLA said it had no record of the court informing it of the correct offence.

**ICA outcome:** The ICA obtained from HMCTS the email it had sent notifying the DVLA of the correct code and – crucially – the Microsoft server message proving that the email had been delivered to the DVLA. What happened after that was a mystery – but whether human error, procedural flaw, or computer glitch, there was no question but that the DVLA was responsible. The ICA made two recommendations. First, he

said that Mr AB deserved an apology and a re-opening of his claim for compensation that had previously been rejected on the grounds there was no evidence the DVLA had made a mistake. Second, he said that advice should be given to the Agency's complaints team on the need to liaise with other public bodies when a customer is uncertain who is responsible for a mistake. Had they done so on this occasion, they would have uncovered the incontrovertible evidence that the ICA had found.

### **Police report of very erratic driving leads to revocation of licence**

**Complaint:** Mr AB, a man in his eighties, complained following the revocation of his driving licence by the DVLA and its decision to refuse his driving licence application. The DVLA's decision followed an investigation triggered by a police report of extremely unsafe driving and of finding Mr AB in a disorientated and confused state. He went on to fail two driving assessments. The effect of the revocation was clearly devastating and Mr AB questioned its basis given his 55 years of safe driving. In particular he highlighted:

- The poorly thought out setup of the vision test he had failed in his first driving assessment (the plate was elevated by five feet with background glare)
- The unfamiliar car he had been expected to drive in the second assessment with a small speedometer and overly responsive accelerator
- Poor explanations and conduct of the assessments
- Poor administration and the failure of the DVLA to respond to his letters or answer the points he and his MP had put to it.

**Agency response:** The DVLA provided just two formal responses to correspondence from Mr AB and his MP challenging the revocation. It refused his request for a further driving assessment.

**ICA outcome:** The ICA informed Mr AB at the outset that the gravity of the concerns raised in the original police report was such that he would expect the hurdle he faced to regain his licence to be a high one. The decision to revoke, he noted, had been made following two professional driving assessments with separate staff conducting each assessment. The ICA could make no criticism of the revocation decision. The ICA did find that the process would have been quicker had the DVLA referred Mr AB for an eyesight test sooner, and he was critical of the Agency for not advising Mr AB that he should complain direct to the driving assessment centre. The ICA recommended that the DVLA address the complaint about the driving assessment centre's number plate reading test and apologise for its poor handling of Mr AB's concerns. In his draft report the ICA recommended that the DVLA should justify its decision not to allow Mr AB to sit a further driving assessment. The ICA welcomed the DVLA's decision to grant Mr AB a provisional licence to undergo further tuition in preparation for an assessment.

## **The time taken to complete medical investigations**

**Complaint:** Mr AB complained about the time taken by the DVLA to complete its medical investigations into his fitness to drive as a vocational driver. He said similar problems had arisen in 2011 and as then he had lost thousands of pounds in lost earnings and sought compensation.

**Agency response:** The DVLA accepted that there had been a delay in reviewing Mr AB's medical questionnaire, but said its actions had been correct and therefore no compensation would be paid.

**ICA outcome:** The ICA identified an initial period of seven and a half weeks between the Agency's receipt of the medical questionnaire and its advice to Mr AB of his right to continue driving under s.88 of the Road Traffic Act. But he could identify no other periods of delay that were the responsibility of the Agency. Noting that at no point was Mr AB's licence refused or revoked, and that six weeks off driving is required under the *At a Glance* guide<sup>11</sup> for all drivers following angioplasty (with or without stents), the ICA agreed with the Agency that neither compensation nor a consolatory payment would be consistent with HM Treasury guidance.

## **What to do when a hospital consultant's report is in error**

**Complaint:** Mr AB complained that his provisional licence had been revoked because of a consultant's mistake. He wanted any trace of the revocation removed from his record.

**Agency response:** The DVLA said that it had revoked the licence based on the totality of the consultant's information. It declined to amend its record.

**ICA outcome:** This was a case at the very edge of the ICA's remit. However, the ICA could find no maladministration in the DVLA's decision not to accept that the revocation was in error. However, the ICA wrote: *"I think the case does illustrate the dangers of the DVLA's questionnaire-based approach to the medical aspects of licensing. Not only did the consultant make a serious mistake on the questionnaire, but he was drawing for the most part on knowledge of Mr AB and his health derived from consultations nearly a year earlier."* The ICA did not think the DVLA could be asked to provide Mr AB with a document setting out the background to his revocation (although its disinclination to do so was not exactly customer-friendly), but he hoped his own independent report would serve that purpose.

---

<sup>11</sup> Now entitled *Assessing fitness to drive – a guide for medical professionals*.

## **Revocation on medical grounds for substance abuse**

**Complaint:** Ms AB complained about the revocation of her licence.

**Agency response:** The DVLA said that it had heeded what Ms AB had told her doctor about her misuse of drugs. The length of the revocation was determined by legislation.

**ICA outcome:** This was not a complaint that the ICA would normally consider as appeals against revocations are made through the courts. However, as Ms AB's Member of Parliament had referred her case to the DVLA and asked for an ICA referral, the ICA decided that in fairness to all parties he would consider the papers. He concluded that there could be no maladministration in the DVLA taking heed of what Ms AB had said contemporaneously to her doctor. And the minimum period off driving for multiple substance abuse was mandated in the *At a Glance* guide. However, the ICA said that it would be helpful if the guide made clear that it applied to the misuse of *derivatives* of the drugs it lists as well as the drugs themselves, and was pleased to learn that the DVLA was working on revisions of the guide with the aim of achieving greater clarity on issues such as this one.

### **The 'exceptional case' criteria**

**Complaint:** Mr AB complained about the decision of the DVLA to refuse his licence applications on the grounds of a debarring visual field defect. He said that his application should be considered under the 'exceptional case' criteria.

**Agency response:** In the course of protracted correspondence, the DVLA said that Mr AB did not meet the terms of exceptionality.

**ICA outcome:** The ICA said that this was a case that did not present clear distinctions between clinical decisions and procedural fairness. It was evident that clinical opinion was not of one mind as to the extent (if any) to which Mr AB's visual field loss was attributable to glaucoma. Indeed, medical opinion was not of one mind whether Mr AB suffered from glaucoma at all. However, considering the medical evidence and the terms of the 2013 regulations, the ICA could identify no maladministration in the DVLA's approach. However, he welcomed the Agency's decision to pass the case back to the Secretary of State's Honorary Medical Advisory Panel, and the DVLA agreed that his report would be shared with all members of the Panel. Given Mr AB's age and the time that had elapsed, the ICA also said he hoped that all matters associated with Mr AB's case could be addressed with alacrity from now on.

### **Delay followed by good practice**

**Complaint:** Mr AB complained about the delay in processing his licence renewal following revocation on medical grounds.

**Agency response:** The DVLA acknowledged there had been a delay and offered a consolatory payment of £250 that Mr AB had rejected.

**ICA outcome:** The ICA found that there had been two separate periods of delay, but the DVLA had only considered one of them. He therefore proposed increasing the sum to £350. He also said that the DVLA should have an opportunity of considering a compensation claim if Mr AB could demonstrate material loss. In general, however, the ICA thought that the DVLA deserved credit for the way it had responded to the results of Mr AB's first driving assessment to ensure he could prepare effectively for the second that had resulted in the granting of a licence.

### **More delay followed by more good practice**

**Complaint:** Mr AB complained about the time taken by the DVLA to complete its medical investigations.

**Agency response:** The DVLA accepted that the case had taken longer than normal.

**ICA outcome:** The ICA identified one period of two months avoidable delay at the beginning of the case, but was not persuaded that the DVLA had otherwise been maladministrative. Indeed, its actions had been designed to ensure that Mr AB had the best opportunity of regaining his licence. A decision could have been taken to revoke Mr AB's licence at an earlier stage, but the Agency had acted with his best interests in mind. (A compensation claim was on hold until the ICA report, and the ICA made no recommendation as the Agency had yet to consider the claim.)

### **(iii) Enforcement**

3.22 Complainants in enforcement cases are usually first offenders who think they have notified SORN or disposal but have not. We find that much of the correspondence from the DVLA is frankly mechanistic, and complaints are not always properly distinguished from appeals. Those charged with clamping untaxed vehicles are usually speedy in their work, as they must be given the tight timescale between impounding and disposal. However, there is a risk of real injustice in consequence. Some cases have raised concerns that the Agency's presumption that enforcement is justified blinded it at appeal stage to evidence of injustice arising from its largely mechanised systems.

## **A customer who was fined for failing to insure a car he had sold**

**Complaint:** Mr AB complained that he had been unreasonably pursued for a fixed penalty notice for failing to insure a vehicle when in fact he had notified the DVLA that he had disposed of it two months previously.

**Agency response:** The DVLA initially corresponded with Mr AB through its contact centre, before the fixed penalty notice had been levied, as Mr AB was querying why he had not received an automatic tax refund. In this correspondence Mr AB explained that he was no longer the keeper but this was not picked up by the Agency. The following month, the fixed penalty notice was levied and in the correspondence that followed the DVLA set out the statutory basis of its enforcement of continuous insurance (CIE).

**ICA outcome:** The ICA noted that the officer from the DVLA who had referred the case for his review had spotted that the team dealing with Mr AB's appeal had not been aware of his earlier dealings with the contact centre over the missing refund. The ICA felt that the DVLA might have acted sooner once Mr AB had explained that that he was no longer the registered keeper. On the other hand, the ICA also had sympathy with the DVLA's position that Mr AB had not followed up the lack of an acknowledgement of his original notification of disposal. On balance, the ICA felt that it would be unfair for Mr AB to bear the full weight of enforcement action. He therefore recommended that the DVLA should reimburse him £25, half of the sum he had paid for the fixed penalty

## **A driver whose car was clamped after the tax was removed after a fraudulent change of keeper notification**

**Complaint:** Mrs AB complained that, having registered her car to another person without telling her and then clamping and impounding it, the DVLA effectively withheld the vehicle from her for over a fortnight while its release from the pound was negotiated. The DVLA's handling was, she argued, all the more unfair and unreasonable as its officers were fully aware of her reliance on her car given her multiple sclerosis.

**Agency response:** When Mrs AB contested the impounding of her car, the DVLA's clampers checked with the police and the Agency that it was untaxed. It transpired that the tax had been removed from the car as a result of the original registration certificate (which had been stolen from Mrs AB in a burglary some weeks previously) being presented in order to register a change of keeper. When the car was confirmed as untaxed, it was impounded. Mrs AB contested the enforcement action vigorously in the days that followed, and eventually was allocated a member of the complaints team who prioritised her case given her disability and enabled her to reclaim her car without charge.

**ICA outcome:** The circumstances of Mrs AB's case were unique in the ICA's experience, in that the clamping and impounding were contested by a person



recorded as the previous keeper, who held the keys, outside whose home the car was being kept and whose name and email address clearly matched the personalised plate. In addition, Mrs AB was a person with a heavy reliance on her car as a result of her medical condition. From her own account she was also able to furnish proof of having paid vehicle excise duty in the month of impounding by direct debit. He therefore expected that, in such bizarre and novel circumstances, a senior clumper or the DVLA would have some discretion for delaying the removal of the vehicle pending further investigations. The ICA was assured that cars bearing blue badges and those with a disabled taxation class, at least, will not be enforced against in the same way.

Although the ICA commended the member of the complaints team who had prioritised Mrs AB's case, he felt that her circumstances meant that this should have happened sooner. It was not until day eight that the Agency realised that Mrs AB had multiple sclerosis although she had disclosed this in her email on day two. Once this information was understood by the DVLA, Mrs AB's case was prioritised and she was able to collect her car on day 12, a fortnight after it had been impounded. Given the time it took and some failings in the DVLA's complaint handling, the ICA recommended that a consolatory sum of £250 should be paid to Mrs AB.

### **A driver whose car was impounded after the DVLA accidentally refunded his tax to the previous keeper**

**Complaint:** Mr AB complained that his car had been impounded by the police for having no tax cover despite the fact that he had taxed it shortly after buying it some five months earlier. Mr AB also complained about the DVLA's confusing and disjointed responses to his correspondence.

**Agency response:** The DVLA established that the root cause of the problem was that Mr AB's tax had been refunded to the previous keeper of his car. This had occurred because Mr AB had not dated the V5C new keeper notification. In line with its standard practice, the DVLA had used its processing date for the change of keepership. The effect of this was that, because more than ten days had elapsed since the tax had been purchased, the system had generated an automatic refund. Due to a glitch, the refund had been sent to the previous keeper rather than to Mr AB even though it had been he who had taxed the car. In its referral to the ICAs the DVLA highlighted that the system error had been resolved, and admitted that what should have been a straightforward case for the complaints team had been mishandled due to the sickness of a member of staff.

**ICA outcome:** The ICA agreed with the DVLA that it bore most of the responsibility for the original error and that it had mishandled Mr AB's correspondence. He pointed to confusing and incomplete explanations, and a refusal to consider compensation despite the fact that Mr AB had had to pay hundreds of pounds to get his car released from the pound. The ICA recommended that the DVLA reimburse Mr AB his £100 fee and pay £200 in recognition of the distress and inconvenience that the police action had caused and for its poor handling of the subsequent correspondence. The ICA

would have recommended a higher sum were it not for Mr AB's contribution to events in the form of omitting the date from his notification.

### **An error by the Post Office that resulted in an elderly driver being taken to court by the DVLA for an alleged insurance offence**

**Complaint:** Mr AB complained after, unbeknownst to him, his tax-exempt classic car had been taxed by the Post Office when he had applied to make a statutory off-road notification (SORN). The fact that his car was not insured was detected by the DVLA through the motor insurance database and he was issued with a warning. Mr AB realised the error and attempted to notify SORN by post but for some reason his letter was not received or processed by the DVLA. He was issued with a fine but explained to the DVLA that the underlying problem was that the car had been taxed for road use in error. More correspondence from Mr AB was not received or processed, and he was automatically summonsed to court when a second sweep of the motor insurance database revealed that his vehicle was still uninsured.

Mr AB complained that the protracted court action that followed was disproportionate and unreasonable given the evidence he had furnished throughout that the error had originated in the Post Office. He had never been to court in his life and had instructed solicitors because the DVLA had not responded to his letters. The case against Mr AB was dropped on the day of his hearing; he argued that all the evidence to close the case had been in the hands of the DVLA months earlier. Mr AB asked the DVLA to repay his legal fees of approaching £1,000.

**Agency response:** The DVLA explained the continuous insurance enforcement regime. It set out why and how Mr AB had been issued with a fixed penalty notice and then summonsed to court. It said that in court its prosecutor had felt that there was a viable case against Mr AB, but she had accepted that the offence had been mitigated and therefore dropped the prosecution. The DVLA was clear that it had not received Mr AB's SORN notification and that its systems had identified a genuine breach of the legislation. He had had the opportunity to act on the fact that an acknowledgement of the SORN had never been sent to him and did not do so.

**ICA outcome:** The ICA reminded the DVLA that the point of the CIE regime was to reduce the numbers of uninsured vehicles on the road and the burden on the courts of avoidable prosecutions. He noted that in the period in which Mr AB had been the subject of enforcement action the DVLA had issued over 100,000 fixed penalty notices for insurance evasion. Some 3,000 'second offence' cases had been going to court every month through the DVLA's automated escalation procedure. The ICA accepted that the efficiency advantages of an automated system were obvious. He suggested that the system should be balanced with safeguards against unfairness in individual cases. The ICA felt that the following Ombudsman principle applied to the enforcement risks:

*"When taking decisions, and particularly when imposing penalties, public bodies should behave reasonably and ensure that the measures taken are proportionate to*

*the objectives pursued, appropriate in the circumstances and fair to the individuals concerned [...] If applying the law, regulations or procedures strictly would lead to an unfair result for an individual, the public body should seek to address the unfairness. In doing so public bodies must, of course, bear in mind the proper protection of public funds and ensure they do not exceed their legal powers.”*

The ICA felt that Mr AB bore some responsibility for not noticing that his car was taxed and not determinedly following up the lack of confirmation that it was subject to SORN. The ICA also noted that the Post Office had apparently mis-registered the vehicle. The ICA's conclusion was that the DVLA had an opportunity through the correspondence it had received from Mr AB to act on the fact that his car was incorrectly registered as taxed and subject to road use. This after all was the false trigger for CIE enforcement. The ICA contrasted the DVLA's insistence that Mr AB should have read the advice in its letters with the fact that it had not acted on letters it had received from Mr AB. In particular, the Agency did not act on Mr AB's correspondence preceding the court date until the day of the hearing. The ICA recommended that the Agency pay Mr AB £300 in recognition of the fact that it did not act sooner to bring the misplaced enforcement action to an end.

### **A customer who SORNeD the wrong vehicle**

**Complaint:** Ms AB complained about enforcement action taken against her in respect of a vehicle to which she had transferred a number plate from another car she had owned.

**Agency response:** The DVLA said all its actions had been correct. The Agency said the mistake had been on Ms AB's part in declaring the wrong vehicle as SORNeD. If Ms AB had been in any doubt when receiving a refund of tax, she should have phoned the Agency.

**ICA outcome:** The ICA said that his take on the affair was rather different from that of the DVLA. While the enforcement action had been taken correctly in terms of what was on the DVLA's records, it was quite clear that Ms AB had had no intention of defrauding anyone. The whole matter was just an unfortunate misunderstanding. The customer-friendly response, therefore, would be for the DVLA to refund the £40 out of court settlement as a gesture of goodwill. This was agreed.

### **Absence of a reminder notice is no mitigation for a failure to tax a vehicle**

**Complaint:** Ms AB complained about the imposition of an LLP (Late Licensing Penalty) as tax on her vehicle had expired. She said she had not received a reminder notice V11 nor was in possession of the V5C. Her attempt to obtain a replacement V5C had failed six months earlier as she had submitted the wrong vehicle identification number (VIN).

**Agency response:** The Agency said it was still Ms AB's responsibility to ensure her vehicle was taxed or subject to SORN.

**ICA outcome:** The ICA said it was abundantly clear that Ms AB's responsibilities were not mitigated by the absence of the V11. The Agency had in fact sent two letters regarding the incorrect VIN to Ms AB's address, but she said she had not received them. In any event, she could still have taxed her car by submitting a new V62 form at the Post Office. Since she did not have a V5C and had apparently heard nothing for six months, this would have been the appropriate course of action in any case.

### **A Late Licensing Penalty sent to an old address**

**Complaint:** Mr AB complained that he had been subject to a late licensing penalty and four s.29 breaches for having an untaxed vehicle as a consequence of having neglected to tell the DVLA about his change of address in respect of the registration. (He had notified the DVLA in respect of his driving licence.) He sought a 50 per cent reduction in the out of court settlements.

**Agency response:** The Agency had explained that its actions were entirely in line with the legislation.

**ICA outcome:** The ICA said that he sympathised with Mr AB but could discern no maladministration on the Agency's part. He said he accepted the need for the Agency to keep separate drivers and vehicles databases, and the abolition of the tax disc (which Mr AB had also raised in mitigation) was a matter of Government policy. There were no grounds to uphold the complaint.

### **Providing specific links to the latest regulations**

**Complaint:** Mr AB complained about the removal and scrapping of his vehicle. He charged that it was unlawful.

**Agency response:** The DVLA said that it had sent an impounded vehicle advisory letter to the address it held for Mr AB. All its actions were in line with normal procedures.

**ICA outcome:** The ICA said that Mr AB had been subject to three separate legal processes (an LLP under continuous registration, traffic offences brought by the police, and the impounding and destruction of his vehicle by the DVLA's devolved partner. It was apparent that Mr AB had found this somewhat confusing. On the substantive matter, the ICA said he could offer no comfort to Mr AB. He had been stopped by the police when driving an untaxed, un-MoT'd vehicle in a dangerous condition. Nor was it the Agency's fault that he had not notified a change of address as he was required to do. Nor was the ICA convinced of the valuation that Mr AB had put on his vehicle. However, the ICA said that simply referring Mr AB to the [legislation.gov.uk](http://legislation.gov.uk) website was not very helpful - and, in fact, Mr AB (like the authors of the most recent Parliamentary briefing) had not identified the amendment to the regulations that permitted the disposal of uneconomic vehicles within seven days and

all others within 14 days. The Agency agreed that providing a more specific link or quoting directly would be better in future.

#### **(iv): Disclosure of keeper data to private car parking companies**

3.23 Regulation 27 of the *Road Vehicles (Registration and Licensing) Regulations 2002* allows the Secretary of State for Transport to disclose information from the vehicles' register for use by any person "*who can show [...] that he has reasonable cause*". This authority is delegated to the DVLA and which follows a case-by-case approach to applications. The Agency also allows automated access to the register by bodies who have passed a probationary period and who adhere to certain rules.<sup>12</sup> As ICAs, we receive a steady trickle of complaints from people who feel that these rules have been broken by private parking companies to the extent that the DVLA's disclosure is maladministrative.

3.24 The DVLA's role is data control, not the direct regulation of private parking companies. We have needed in some of our reviews to point this out and to make the point that the ICA scheme, and the DVLA complaints process before it, cannot provide rulings on the Government's data release policies. However, some customers have raised with us extensive concerns about the ethical and legal basis of public data being used to further private parking enforcement. In our view, the extent of an Agency response through the complaints process to a report of unlawful private parking practice should be in proportion to the evidence presented that the Agency is responsible for injustice.

#### **Personal data and the difference between parking and stopping**

**Complaint:** Mr AB complained about the release of his personal data under the terms of the KADOE (Keeper at Date of Event) contract between the DVLA and parking company. He said that his vehicle had 'stopped' but was not 'parked'. He criticised other aspects of the DVLA's procedures.

**Agency response:** The DVLA said that stopping in an unauthorised area represented 'reasonable cause' under which data could be released.

**ICA outcome:** The ICA considered that much of Mr AB's complaint came within the statutory remit of the Information Commissioner. However, there were matters on which the ICA could make findings. He observed that the law relating to reasonable cause took precedence over the terms of the KADOE contract. Nonetheless, he recommended that the KADOE be amended to make clear that it included 'stopping' as well as 'parking'. He also made observations on the DVLA's complaint handling.

---

<sup>12</sup> More information about this is available in the DVLA's document 'Release of information from DVLA's registers'

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/433570/INF266\\_210515.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433570/INF266_210515.pdf)

## **A failure by a parking company to obtain planning permission for signage that had no impact on the DVLA's data duties**

**Complaint:** Ms AB complained that the DVLA had failed to act appropriately in response to notifications that a private parking company was acting unlawfully. Ms AB's complaint centred on the fact that the parking company had not obtained planning permission for signage in a shopping centre car park.

**Agency response:** The DVLA set out its role in relation to private parking companies (in particular, that it is not a regulator) along with the fact that it had already received and acted on the information Ms AB had provided.

**ICA outcome:** The ICA found that, while it appeared that parking permission had not been in place for some time prior to the retrospective granting of it by the local council, the planning considerations relating to signage had little or no bearing on the DVLA's data control duties. The ICA found that the British Parking Association had provided adequate assurance that the planning permission aspect was covered; and that while the private parking company might have looked harder at its understanding that the landowner was responsible, the significance of the planning permission concern in the end was minimal. Where other bodies, namely the council and the police, had not prosecuted unlawful conduct, the ICA did not judge that it fell to the DVLA to do so. The ICA did not uphold the complaint.

## **A complainant who felt that a High Court judgment against a private enforcement company had vindicated his original complaint**

**Complaint:** Mr AB initially complained to the ICA in 2014. His complaint followed enforcement action against him by a company enforcing trespass on private property. Mr AB argued that this company, which was not a member of a DVLA-accredited trade association (ATA), should not be given DVLA data (a condition imposed at Ministerial level for private parking companies to receive DVLA data is ATA membership). In the first ICA review of his case, the ICA had concluded that the DVLA's position had not been unreasonable although its administration had lapsed from an acceptable standard in some regards. In his 2015 complaint to the ICA, Mr AB argued that he had been vindicated in his original position that the enforcement company was not entitled to keeper data while it operated outside of an ATA. In his complaint Mr AB referred to a recent High Court judgment that had found it was reasonable for the DVLA to require the trespass enforcement company to be a member of an ATA.

**Agency response:** The DVLA maintained that it had extended the Ministerial policy in question to cover companies enforcing against trespass, and that it had not made any mistake in its disclosure of data prior to that point.

**ICA outcome:** The ICA found that the DVLA had not been maladministrative in deciding in 2012 that a company whose business model depended on prohibiting parking did not need to meet the same conditions for data receipt as companies whose model depended on facilitating parking. The ICA welcomed the clarification of

the situation contained within the High Court judgment, and found that Mr AB's complaint and representations in court had been a factor in the DVLA changing its position. However, he did not uphold the complaint that the original DVLA decision to disclose keeper data to the company had been wrong. He recommended that the DVLA's chief executive should write to Mr AB thanking him for his contribution to a change in policy that had been validated in the High Court.

### **A complainant concerned that unlawful conduct by a private parking company had a negative impact on the public and retailers in his area**

**Complaint:** Mr AB complained in detail that the DVLA had disclosed his data to a private parking company (PPC) inappropriately, and had failed in its duties to ensure that its data release to the PPC was lawful and in line with its published policies.

**Agency response:** The Agency responded briefly in the early stages of the complaint before becoming absorbed in a protracted correspondence with Mr AB involving multiple Freedom of Information Act disclosures and complaints about its handling of his case.

**ICA outcome:** The ICA noted that Mr AB's hardship had consisted of the imposition of a parking fine that had been rescinded quickly by the PPC. He examined the evidence and did not conclude that any disclosure of personal information had been made by the DVLA. Nor did he uphold the majority of the 28 pages of the complaint he received, although he was critical of some of the Agency's earlier less detailed responses. He considered that much of Mr AB's complaint should be directed towards the political decision-makers. The ICA did not feel it was for him to audit the DVLA's own assurance mechanisms; or that this case justified such a process. Based on his review, the ICA did not judge that the DVLA's data handling had been unlawful either. The ICA noted that the motivation for Mr AB's complaint was PPC practices he felt were immoral and unfair, particularly towards people less equipped to appeal against the penalties imposed.

### **(v): Other DVLA casework**

#### **A company reliant upon a single specialist vehicle**

**Complaint:** Ms AB complained on behalf of her firm. Re-taxing a showman's haulage vehicle had taken longer than the DVLA target and Ms AB said she had lost business as a consequence.

**Agency response:** The DVLA acknowledged that a phone call had not been returned and had offered a consolatory payment of £200.

**ICA outcome:** Although the DVLA was marginally outside its service target, the ICA did not consider that this amounted to maladministration. The company's dependence upon one vehicle that was incapable of repair was a commercial risk that it was the company's responsibility to mitigate; it was not the taxpayer's fault that the vehicle

broke down and had to be replaced. The ICA said that the offer of £200 was quite generous in the circumstances and did not uphold the complaint.

### **A misdirected application for a replacement photo-licence**

**Complaint:** Mr AB complained about the length of time it had taken to renew the photograph on his driving licence.

**Agency response:** The DVLA acknowledged there had been an error in that the matter had been wrongly referred to the Drivers Medical Group. However, when Mr AB had drawn the matter to their attention, the new photo-licence had been issued straightaway.

**ICA outcome:** The ICA found that the DVLA website says online applications should mean the new licence arrives within one week. In this case, the licence was issued after just over two weeks. There clearly had been some maladministration and it was not known why the application had been wrongly referred to DMG. However, in light of the ICA's terms of reference, a full review of this matter was not justified. The ICA upheld the complaint but judged that, in line with HM Treasury guidance, there was no case for refunding Mr AB his £14 fee; the apologies he had already received represented adequate redress.

### **A plate issued in error**

**Complaint:** Mr AB complained that he had initially been allocated a year plate for an imported a vehicle, but this had subsequently been replaced with a Q plate indicating uncertainty about the vehicle's provenance.

**Agency response:** The Agency had explained that the initial plate had been issued in error. A second hand frame had been used.

**ICA outcome:** The ICA agreed with the Agency that a Q plate was appropriate and in line with DVLA policy in its leaflet INF26. However, it was also clear that there had been some maladministration: an error and poor advice from the Agency. The ICA was also able to secure a refund of VED and a registration fee of over £400. However, while recommending an apology, the ICA did not believe that further redress was justified.

### **Time taken to renew a licence**

**Complaint:** Mr AB said the process for renewing his licence had taken too long.

**Agency response:** The DVLA said it had followed standard procedures and met its 90 working day target.

**ICA outcome:** The ICA agreed that the DVLA had simply done as it always did, and had met its own target. However, he also identified a period of roughly six weeks



where nothing was done at all. Drawing upon a previous ICA report in identical circumstances, the ICA recommended an apology and £50 consolatory sum.

### **When vehicle tax represents poor value for money**

**Complaint:** Mr AB complained that as a result of advice he received from the DVLA contact centre he had purchased VED the end of September and that this was very poor value for money.

**Agency response:** The DVLA said that VED had been correctly paid and that while the adviser had not told Mr AB until the end of the call that he would pay a month's VED for just two days of the month remaining, the call would not have failed their quality assurance process.

**ICA outcome:** The ICA asked to listen to the recording of the call, but despite making his request within the three months the Agency retains recordings this was not actioned in time. The ICA said that, as a consequence, Mr AB had been disadvantaged (since the ICA could not come to an independent view about the call) and recommended a consolatory payment of £20. However, he said he did not accept Mr AB's contention that VED was not due. It was clear that Mr AB was the keeper of the vehicle and that, bad value or not, he could not ask the DVLA to leave a gap in the vehicle's taxation history. Nonetheless, he hoped the £20 consolatory sum more or less equated to the VED that Mr AB had paid for September.

### **Lost entitlements**

**Complaint:** Mr AB complained that the DVLA had refused to issue him a replacement full licence. It had offered him a provisional licence. He said he had passed his test in the early 1990s.

**Agency response:** The Agency explained that it could find no record of Mr AB ever having been issued a full licence.

**ICA outcome:** The ICA found some inconsistencies in Mr AB's account, but these were not relevant to the question of whether he had ever passed his test. However, the extent of the DVLA's searches of its records made it very unlikely that it had ever issued a full licence but had no trace of doing so. The most likely explanation was that Mr AB's then partner had not sent the details of his test pass, or these had gone missing in the post. In either event, there were no grounds for recommending the issuing of a full licence. The ICA also did not share Mr AB's view that the whole matter had taken too long. No stone had been left unturned. Nor was there a case for the DVLA to pay for Mr AB's new theory and practical tests. The paperwork for this complaint was of the highest order.

## **Paying for a replacement licence**

**Complaint:** Ms AB complained that the DVLA had charged her twice for her driving licence.

**Agency response:** The Agency explained that it would issue a free replacement if a customer alerted the Agency that a licence had not arrived within three months of an application.

**ICA outcome:** The ICA said he could identify no maladministration. It was entirely proper to have a cut-off point, not least so that the more devious customers could not escape paying for a replacement licence at all. In Ms AB's case, she had made two online applications with a gap of eight months between the two. The ICA was also content that the DVLA made sufficient information available so that customers knew what they had to do if a licence did not arrive. Nor could it be held liable for the vagaries of the post: customers had to take some responsibility for their own affairs.

## **A complaint about keepership**

**Complaint:** Mr AB complained about the decision of the DVLA to issue new V5Cs to another person for two vehicles he had acquired years earlier, but which he now said had been stolen.

**Agency response:** The DVLA said it issued registration documents to vehicles' keepers and could not get involved in civil disputes. It said it had not been informed by the police that the vehicles had been the subject of theft.

**ICA outcome:** The ICA partially upheld the complaint. He did not believe the DVLA could be expected to issue Mr AB with new registration documents when it was evident that he was not the current keeper of the vehicles, and there was no police marker on the file. However, the ICA discovered that no V712 reminder letters had been issued to Mr AB but the DVLA had not admitted this to Mr AB on the grounds that the eventual registration decision would have been the same. The ICA took the view that the failure of the V712 safety net represented maladministration and it was not for the DVLA to speculate on what might otherwise have occurred. Furthermore, it seemed that the Agency's conclusion that the outcome would not have differed was based in part upon a mis-reading of the date when Mr AB said he had informed the police of the theft of the vehicles.

## **Sensitive and well-handled investigation into the provenance of an old tractor**

**Complaint:** Mr and Mrs AB complained that the DVLA had unreasonably refused to afford proper weight to their extensive evidence about the true registration of their 1953 tractor. The DVLA's position was that they must imprint a DVLA-generated VIN number onto their vehicle and receive an age-related registration.

**Agency response:** The Agency engaged over a two and a half year period with Mr and Mrs AB after the registration of their tractor was first called into question by another keeper of a different vehicle claiming the same plate. Efforts to establish which vehicle was entitled to the registration were inconclusive. It emerged over two years of further enquiries that Mr and Mrs AB's vehicle was comprised of parts from a number of tractors built in the early 1950s. Crucially, it was impossible to match the chassis number from their tractor with the registration it bore when they purchased it. Mr and Mrs AB produced various items of evidence but this did not strengthen their claim for the registration. Eventually the DVLA commissioned an expert to review the evidence. He concluded that the parts in Mr and Mrs AB's tractor came from at least three different machines.

**ICA outcome:** The ICA agreed with the DVLA that Mr and Mrs AB's tractor was comprised of different parts and was therefore not linkable with the registration plate attached to it. The ICA's only criticism of the DVLA's sympathetic and diligent handling of the correspondence was that the Agency had not told Mr and Mrs AB that it had sought and acted on expert advice. The ICA was able to provide this information in his review so that the evidential basis of the unwelcome position would be clear to Mr and Mrs AB. The Agency indicated that it remained open to considering any further evidence that Mr and Mrs AB might furnish in support of their claim to the registration.

### **A cherished number transfer goes wrong**

**Complaint:** Mrs AB complained that the DVLA had breached her personal information in failing a cherished transfer back to the garage, that it had given poor customer service meriting compensation, and that its complaint handling had been defensive.

**Agency response:** The Agency explained that it had failed the transfer and sent it to the garage as a consequence of details that were on the application form.

**ICA outcome:** The ICA said that alleged breaches of personal data were for the Information Commissioner, but it was difficult to see how the form could have been returned to the garage if these details were not on it. (The form was not available to check as rejected applications are not scanned). The ICA also discerned no failures in customer service; indeed, he commended aspects of it. A certain amount of inconvenience is to be expected in any citizen's dealings with a public body. In this case the ICA could identify no maladministration and the threshold for compensation, in his view, was nowhere near met. However, the ICA was critical of the six weeks the DVLA had taken to make the referral to an ICA after it had been requested by Mrs AB and he recommended an apology.

## **A complaint about the registration of new types of vehicle**

**Complaint:** Mr AB complained that there had been inconsistencies in the First Registration (FR) department of the DVLA in registering the electric scooters his company retails.

**Agency response:** The DVLA acknowledged there had been human errors, but had felt unable to say more to Mr AB for data protection reasons.

**ICA outcome:** This was an interesting and unusual complaint. The ICA found there had been teething problems in the FR department in processing one of Mr AB's vehicle models, although most had gone through smoothly. He understood why the Agency had felt unable to discuss individual customers' problems. However, the ICA was surprised that no one in the FR department had rung Mr AB to talk through procedures, and to offer a personal apology, and he recommended accordingly. Pleasingly, this restorative approach was accepted by the DVLA and Mr AB now has a personal contact should any problems recur.

## **A keeper loses the rights to a personalised registration**

**Complaint:** Mr AB exported his car in July 2009 with a personalised plate *in situ* and was absolutely clear that he had consulted with the DVLA and had been informed that he should retain the plate pre-export. He ran into problems in 2010 after he brought the car back into the UK. He complained about unclear, inaccurate and contradictory advice in many of his telephone dealings with the DVLA. He has now sold the car and complained that, having followed DVLA advice at every stage, he had been told that he has lost the rights to the plate.

**Agency response:** The DVLA admitted that it had given Mr AB false hope that he could transfer the plate because its staff had missed the fact that an export marker existed. He was refunded the cost of keeping the recipient car taxed. However, despite strenuous efforts to assist, the Agency could not retain the plate for him because he was no longer the keeper.

**ICA outcome:** The ICA found ample advice on retaining plates pre-export but was unable to know what had been said to Mr AB when he rang the DVLA in 2009 before exporting his car. It was fairly clear that, despite not formally reimporting the car, Mr AB had been able to tax and SORN it – the ICA was critical of the Agency for not flagging the exported status at these stages. The ICA concluded that the root cause of Mr AB's problems had been his lack of awareness of the complex rules for plate retention. In particular, he had ignored the advice not to dispose of a vehicle before retaining or transferring the plate. The ICA did not uphold the complaint that it had been DVLA maladministration that had blocked the rights to the plate from being retained, but recommended that the DVLA pay him a consolatory sum of £50 in recognition of its role in giving him false comfort that his car could be subject to the plate retention scheme.

## **Paying vehicle tax by direct debit**

**Complaint:** Mr AB complained on two grounds. First he said the DVLA were not following the 'guidelines' on direct debits in that money was taken on different days without notice. Second, he said that when his VED direct debit failed he had tried to SORN his vehicle by post but this had not been actioned by the DVLA.

**Agency response:** The Agency said it had no record of Mr AB trying to SORN his vehicle before he did so electronically after a LLP was issued. It had listed his direct debits payments and the two warning letters he had been sent.

**ICA outcome:** The ICA said he could see no evidence that the DVLA did not follow standard practice on direct debits. In the case of the DVLA, money was taken on the first weekday of the month unless this fell on a Bank Holiday. The requirement to alert customers in advance of a change in payment day only referred to permanent changes. As far as the 'lost' SORN was concerned, the ICA said there was no additional evidence one had been sent (and he noted that Mr AB had conducted other transactions electronically). He also noted that Mr AB had not contacted the DVLA on receipt of either of the warning notices.

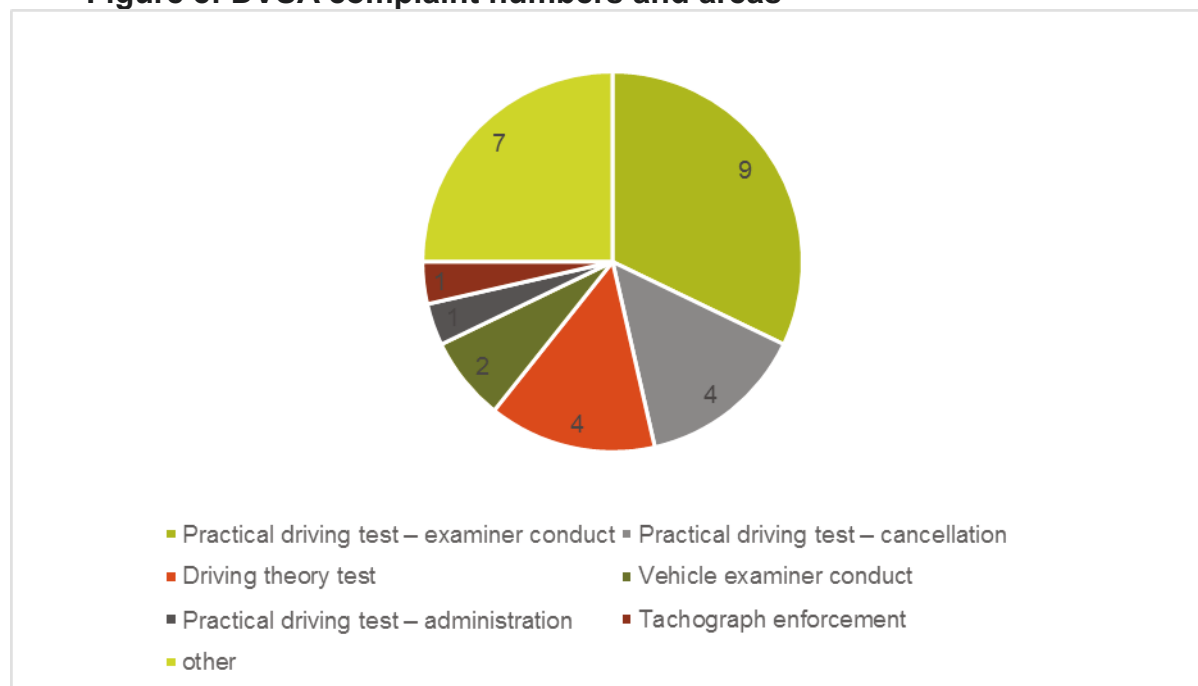
## 4. DVSA casework

- 4.1 Table 6 and Figure 8 describe DVSA complaint areas this year, and the Table also provides a comparison with 2014-15. The pattern of complaints seems to be very consistent over the two years.
- 4.2 The more significant finding is the continued reduction in ICA referrals over the past three years at a time when we understand the overall number of complaints to the DVSA has increased quite significantly.

**Table 6: DVSA cases**

Business area	2014/15		2015/16	
	Number	%	Number	%
Practical driving test – examiner conduct	14	37%	9	32%
Practical driving test – cancellation	5	13%	4	14%
Driving theory test	3	8%	4	14%
Vehicle examiner conduct	1	3%	2	7%
Practical driving test – administration	0	-	1	3.5%
Tachograph enforcement	1	3%	1	3.5%
MOT enforcement	3	8%	0	-
Approved driving instructor registration	2	5%	0	-
Other	9	24%	7	25%
<b>Total</b>	<b>38</b>		<b>28</b>	

**Figure 8: DVSA complaint numbers and areas**



- 4.3 The uphold rate in DVSA cases is significantly lower than in DVLA casework. Just three cases were upheld in full (one vehicle case and two driver cases), and two were upheld in part (both driver cases). A very high figure of 23 (82%) were not upheld in any regard.
- 4.4 Of those 23 cases not upheld at all, nearly half (11) involved an account of staff conduct, not substantiated in the Agency's own investigation, that we could not resolve at our stage. Almost all were a case of one person's word against another's. Unless there is objective evidence to the contrary, we cannot criticise the Agency for accepting the account of decision-making and conduct of its professional examiners who conduct many hundreds of driving tests each year. Equally, we have recognised that customers would not be pursuing their cases if they did not sincerely believe that injustice had occurred. We accept that examiners, like ICAs, will occasionally make mistakes. Absolute objectivity and consistency is impossible where road conditions vary and human beings are adjudicating. In these cases our focus has been on the rigour of the DVSA's own investigations. On occasion we have suggested that candidates who doubt the fairness of the test system have their instructor accompany them on their next test.
- 4.5 We made nine recommendations to the DVSA: two for cash payments, three for action by the chief executive, three to otherwise change systems, and one to change the information provided to the public.
- 4.6 Two unsuccessful theory test candidates complained that the Agency would not release sufficient information about their performance in the hazard awareness test. We did not uphold their complaints as we felt that the Agency had correctly weighed the need to protect the integrity of the test system with its duty to disclose information. And we had a handful of complaints about reimbursement of costs after test cancellation. This has been a challenge for the Agency over the period in question but its staff are to be commended for resolving the vast majority of such complaints within the Agency's three stage process.
- 4.7 Average case completion time in DVSA cases was 4 hours 24 minutes<sup>13</sup> with the driver (former Driving Standards Agency) cases taking about an hour on average less to complete than vehicle (former VOSA) cases (4 hours 12 minutes compared to 5 hours 10 minutes).

---

<sup>13</sup> This is slightly different to the figure in Table 2 which refers to all cases completed 2015-16 (i.e. Table 2 includes the cases which arrived in 2014-15 and that we finished in 2015-16; and omits cases which were finished 2016-17).

## **(i): Equalities**

4.8 The most common service issue raised in ICA complaints was the attitude of examiners (seven complaints, two of which included complaints of racial bias).

### **Comparative pass rates in urban and rural areas**

**Complaint:** Ms AB complained about the outcome of a practical driving test and the way the examiner had conducted the test. She asked for reimbursement of her costs.

**Agency response:** The DVSA had carried out its standard review and was content that the test had been conducted properly.

**ICA outcome:** The ICA said that he was content with the Agency's investigation and, as he was not in the car at the time, there was little he could say about the test itself. However, he noted that Ms AB had raised the low level of passes at her test centre compared with others, and this had not been answered by the DVSA. He added this comment:

*"It is a consistent finding from the official statistics that test centres serving more rural areas have a higher pass rate than those serving more urban areas. There may be many objective reasons for this: including the state of preparation of candidates, and the fact that driving in rural areas is simply less stressful for candidates than it is on busy urban streets. The figures certainly do not prove that examiners in one centre are 'stricter' than those in another, or discriminate against particular candidates. However, it is evident that the Agency must continue to keep a close eye on the comparative performance of its test centres to ensure that there are no cultural or institutional biases in the testing regime."*

### **An allegation against a driving examiner**

**Complaint:** Mr AB, a driving instructor, complained about a driving examiner whom he said was verbally abusive and unreasonable in his demands. He further alleged that the low pass rate at the centre in question might indicate improper discrimination.

**Agency response:** The DVSA said that the actions of the examiner were appropriate and that the DVSA was an equal opportunities employer.

**ICA outcome:** The ICA said that he could not determine what happened in the car on the day in question, and he rejected other aspects of Mr AB's complaint. However, he suggested that the DVSA's system of quality assurance focused on individual examiners and might not pick up on issues relating the differences in pass rates between centres. He recommended that a copy of his report be shared with the DVSA's Head of Quality Assurance for his consideration.



## (ii) Other DVSA complaints

4.9 Here we provide details of three other DVSA complaints we have reviewed in the past year. They offer a flavour of the range of issues we consider.

### **A vocational driver was unable to work because he did not have the necessary qualification and, he alleged, the DVSA had lost his licence**

**Complaint:** Ms AB complained on behalf of Mr CD that the DVSA had mishandled his application for Certificate of Professional Competence (CPC) / driver qualification certificate (DQC) accreditation. In particular, she complained that the DVSA had lost Mr CD's driving licence. This meant that he had lost his driving job and had had to return to his country of origin in order to obtain a new driving licence. Ms AB complained that Mr CD had been unable to attend the funeral of a close family member, had been unable to complete the purchase of property, and had become clinically depressed as a result of these events.

**Agency response:** The DVSA initially refused to issue Mr CD with a DQC because it had no record of him supplying the required driving licence. After he had stated that he had provided the driving licence, and after Ms AB had complained several times in the strongest terms, the DVSA accepted responsibility for the loss of Mr CD's licence that he said he had sent by recorded delivery. It therefore agreed to pay his travel costs and a sum to compensate him for his loss of earnings over the period in question.

**ICA outcome:** The ICA was told that the reason a DQC had not been issued to Mr CD automatically was that, like other non-UK drivers, he held a UK counterpart licence against which the DVLA could not register the training he had undertaken. His application had therefore stalled shortly after he had undertaken his periodic training. However, the expectation of his employer and his trainers had been that he would be issued with the DQC in due course. The ICA did not establish the extent to which Mr CD and his advocates had attempted to make contact with the DVSA in the months following his completion of periodic training. He concluded that the efforts they had made had not been sufficiently strenuous and thus judged that an element of responsibility for Mr CD's lack of the DQC resided with him. The ICA was critical of all parties for the fact that Mr CD had been working as a bus driver for five months without the required qualification.

The ICA was also critical of the DVSA for failing to undertake a timely and thorough investigation into the circumstances of the licence disappearing. He did not think that the evidence proved that the Agency had lost the driving licence, but he noted that it had taken responsibility for the loss. The DVSA had also failed to respond to the service complaint that was made by Ms AB on behalf of Mr CD. Taking everything into account the ICA felt that the sum of money offered by the DVSA more than covered the poor administration he had identified in his handling of the case. He did not therefore uphold the complaint that the DVSA should pay more.

## **A fleet operator who complained that a prohibition notice had been unfair**

**Complaint:** Mr AB, who operated a fleet of public service vehicles, complained that a school bus that he was operating was unfairly and incorrectly issued with a delayed prohibition notice (a PG9) for an excessive oil leak during an inspection by the DVSA and the local council. Mr AB complained that, despite providing evidence that the oil leak fell considerably below the threshold for a prohibition notice, he was denied the opportunity of a re-inspection. The Agency received Mr AB's complaint about the outcome of the inspection within 24 hours. Although its Vehicle Examiner advised Mr AB that he should appeal, when he did so his appeal was not picked up. Mr AB followed this up with approaches to the test centre but was told that the opportunity for a re-inspection had now passed. Mr AB therefore put his vehicle forward for a new MOT that it passed with no advisories. Meanwhile he continued to complain that the opportunity of a re-inspection, offered from the outset, had been denied to him. He also expressed dissatisfaction that the Agency had stated that his driver had not left the vehicle to inspect the leak. Mr AB submitted evidence from his driver, a former police inspector, that he had inspected the leak at the time and had not considered that it met the threshold for a prohibition notice.

**Agency response:** The Agency's Head of Operations reviewed all of the handling of Mr AB's case. He said that Vehicle Examiners had no instructions to photograph leaks although it would have been best practice to have done so. The Head of Operations accepted that Mr AB's complaint about the prohibition notice had been mishandled, and undertook to remind his staff to deal with such requests more efficiently in future. He also found that the member of staff that had refused to re-inspect should have been more flexible and that a re-inspection should have occurred.

**ICA outcome:** The ICA agreed with Mr AB and the Head of Operations that the initial investigation of the complaint had been poor. The ICA concluded that the people cited as witnesses to the oil leak, namely another DVSA Vehicle Examiner and a council vehicle inspector, should have been asked whether the driver had inspected the leak. The ICA spoke to one of the witnesses who was unable to confirm that the leak he saw corresponded with Mr AB's vehicle. The other witness, the council employee, did not respond to the ICA's request for information.

Although the ICA preferred Mr AB's evidence that his driver had inspected the leak, he did not reach a firm conclusion on this or on the extent of the oil leak, given the uncertainties in the evidence. However, he felt that application of the policy for complaining about prohibition notices had been poor, and he welcomed the Agency's undertaking to remind its staff to apply the policy sensibly in future. As a goodwill gesture the Agency agreed to lift Mr AB's prohibition notice. It also agreed to consider more robust evidence-gathering in its forthcoming review of the categorisation of defects framework.

## **The enforcement of working time regulations**

**Complaint:** Mr AB complained that a firm for which he had worked had regularly breached the working time regulations.

**Agency response:** The DVSA said it had followed its well-established procedures. An examiner had found no shortcomings on the company's part.

**ICA outcome:** The ICA said that in its response to Mr AB's information, and its response to his complaint, he could discern no maladministration on the part of the DVSA. Given the unambiguous findings of the Traffic Examiner, and the lack of any other intelligence, there was also no reason to propose further inspection of the company's records.

## **Unreasonable requests for information about the hazard perception test by a candidate**

**Complaint:** Ms AB complained that, despite repeatedly passing mock hazard perception driving theory tests using practice materials, she inexplicably failed the actual test. She asked for precise information about how she had failed and for technical assurances about the integrity of the computer system running the test. After the testing company Pearson and the Agency had responded she remained dissatisfied as she felt that they had provided insufficient proof that she had failed. She disputed the Agency's rationale for not providing her with precise data about where she had lost points.

**Agency response:** Pearson denied that any technical issues had arisen during the test and provided Ms AB with data to support its marking. This did not enable her to isolate the precise judgements where she had lost marks, and in further communications with the DVSA more detailed information was provided. This still did not pinpoint the errors Ms AB was adjudged to have accrued and she progressed her complaint. The DVSA argued that there were limits to the amount of information it could give Ms AB given the limited number of video clips in use in the hazard test and the need to protect the integrity of the test materials. Ms AB's request for information about testing procedures was referred for a response through FOI.

**ICA outcome:** The ICA considered that Ms AB's request for information amounted to a request for the correct responses to the vignettes provided in the hazard perception test. After balancing the Agency's duty to be transparent and to provide good customer service with the need to protect sensitive data and run a low cost proportionate testing service, he found that the DVSA's responses had been reasonable. He did not uphold the complaint.

## **A poor investigation of a theory test candidate's complaint of noise distraction**

**Complaint:** Mr AB complained that he had been distracted by the door of the exam room banging and closing during his motorcycle theory test. He said he had failed (by a single point) as a result. He also complained that he had lost a point for answering a question correctly.

**Agency response:** Pearson, the DVSA's testing agents, said that some noise was unavoidable in a testing environment, and that all candidates were informed that they should put their hand up and speak to a member of staff if they had any difficulties during the test. Noise blocking headphones and earplugs were available. Pearsons pointed out the correct answer to the question that Mr AB was contesting. The DVSA added little to the position set out by Pearsons in the correspondence that followed.

**ICA outcome:** The ICA was critical of Pearsons for not investigating the complaint of noise despite the fact that Mr AB had reported it immediately after his test, triggering an incident report. The ICA also noted that, while Mr AB was told that Pearson staff were trained to a high standard, his complaint of poor attitude and rudeness had not been looked into either. The ICA agreed with Mr AB that good test technique would usually be to score as many points as possible in the time available, and then raise a concern afterwards about noise. Mr AB had not known that noise blocking kit was available, and therefore understandably did not think attracting staff attention would be of assistance.

In the absence of a local investigation of the required standard, the ICA concluded that the environment had been excessively noisy and he recommended that Mr AB should be reimbursed the cost of his test by the Agency. While he did not feel able to conclude that the Pearson staff were rude, the ICA was critical of the DVSA for reiterating Pearson's position that they were not rude in the absence of any evidence. He recommended that the DVSA should pay Mr AB £25 in recognition that in the absence of an investigation the matter should have been resolved at an early stage with a refund.

## **Long waits for driving tests**

**Complaint:** Mr AB complained that his daughter's practical tests had been conducted unfairly. He further suggested that drivers were failed until their third test, that long waiting lists had been in place at the particular test centre for many years, and that the replies to his letters were of poor quality.

**Agency response:** The DVSA had replied at some length regarding all of Mr AB's points.

**ICA outcome:** The ICA did not uphold the substantive elements of Mr AB's complaint. Indeed, he felt that the replies sent by the DVSA were of high quality: much time had been spent researching and reviewing the circumstances of Mr AB's daughter's tests, and the replies merited praise not censure. However, the ICA recommended that a

copy of his report be shared with the chief executive, as the charge that long waits at the test centre were of longstanding was true, albeit the ICA judged that how the DVSA achieved its resource and business targets were matters of policy, and not best pursued through a complaints procedure.

### **A complaint about two failed driving tests reveals good practice by Agency**

**Complaint:** Ms AB complained about the outcome of two practical driving tests.

**Agency response:** The DVSA said it was confident both tests had been conducted properly.

**ICA outcome:** The ICA praised the Agency for the comprehensive way in which it had investigated these complaints and for the local test centre manager's attempt to resolve the problem with a telephone call. Although the ICA could not be certain what had occurred during the two tests, there was no evidence of maladministration and the complaint could not be upheld.

## 5. Other DfT delivery body casework

### (i): Highways England

- 5.1 The six Highways England cases compare with 12 and 11 cases respectively in the two previous years. This reflects the small number of cases reaching the final (second) tier of the company's internal complaints procedure.
- 5.2 As noted above, we upheld each of the cases we reviewed to some extent; four of the six were completely upheld.
- 5.3 Two of the cases concerned road works considered unsafe by the customers who complained. One case related to the cost of the statutory removal of a car that had collided with a motorway central reservation. Another concerned the conduct of a Traffic Officer. One case was about the failure to open up the hard shoulder to relieve congestion. And another related to the lack of retrospective notices inviting compensation for lighting installed many years ago on a section of trunk road. As we have noted, in contrast with previous years, we received no complaints about the company's response to claims of damage to vehicles on its network.

### **Poor handling of a complaint that a Traffic Officer had mishandled the aftermath of a collision**

**Complaint:** Mr AB and his wife suffered an accident involving a lorry that had led to their car being written off and their both narrowly avoiding serious injury. Mr AB complained that a Highways England traffic officer (the TO) (who had not witnessed events) made comments at the roadside that influenced the account of events later provided by the lorry driver. This had jeopardised Mr AB's insurance claim. Mr AB also said the TO had inappropriately refused to involve the police. He also complained about the way that Highways England responded to the complaint, citing vagueness, inaccuracy, omissions, poor communications and customer service, delays, and obstructive behaviour.

**Highways England response:** Highways England promptly referred Mr AB's account of events to the TO's manager, but staff availability and shift patterns meant that an interview did not occur for ten days. In the meantime Mr AB was given little reason to think that his complaint was progressing: when he pressed the point he was told the only way he could find out the TO's account would be through making a Freedom of Information Act application. Eventually, after repeated telephone calls, the company's Director of Customer Operations responded two months after Mr AB's original complaint. In a detailed reply the Director apologised, provided a limited account of the TO's recollection of events, explained that the observations of a TO would, legally, have no bearing on any insurance claim, and concluded that the TO had acted appropriately. However, he undertook to reinforce the message that TOs should not offer tips or opinions on driving or the cause of an incident, especially after situations as fraught as the one Mr AB had been involved in.

**ICA outcome:** The ICA upheld the complaint that the case had been mishandled and welcomed Highways England's reflections on its poor complaint handling. The ICA was particularly critical of the delay in obtaining evidence from the TO and of the failure to respond to the complaint about refusing to request police involvement. While the ICA could not determine exactly what the TO had said at the scene of the accident, he felt that her account was incomplete, and that in the course of assessing the crash scene she had at the very least verbalised her view that the lorry driver had not been driving dangerously. The ICA recommended that members of the Highways England contact centre are provided with training in the complaints process so that they understand when and how to refer concerns expressed by customers into the formal complaints system. Finally, he recommended that the message that a complaint investigation should be triggered at the earliest possible stage after an incident, in particular evidence-gathering from key staff, should be reiterated to the company's managers and, if necessary, given additional prominence in its internal complaints policy.

### **A complaint about a contradiction between the police's and Highways England's handling of a collision.**

**Complaint:** Mr AB collided with the central reservation on a motorway. The police attended the scene and took Mr AB to his mother's house nearby, telling him that his car could stay where it was until his own recovery service could remove it as it was in a safe place. Highways England decided that the two-hour wait for Mr AB's recovery service was too long. Highways England's agent therefore recovered the car and it was impounded. Mr AB complained that he faced recovery charges of £400 that he could not afford and had therefore lost the car. He said that all he had done was to follow the advice of the police officers who had attended; that advice was contradicted by Highways England when they removed the vehicle. Despite this he was being pursued for £355 fees by Highways England's agent.

**Highways England response:** Highways England initially wrote briefly to Mr AB stating that the vehicle had needed to be moved from the central reservation for the safety of road users. He was advised to contact the police. Eventually at the CEO stage, after three months, Highways England provided a more detailed account and rationale for its actions. It declined to waive any fees relating to the recovery and subsequent disposal of the vehicle.

**ICA outcome:** The ICA was critical of the fact that the company had failed to liaise in any way with the police and undertake a joint investigation of the complaint as provided in the Ombudsman Principles. He felt the company's initial letter was very brief and, like its subsequent correspondence, ducked the question repeatedly put by Mr AB in his letters, namely: what should a member of the public do in response to police advice at the roadside? The ICA was also critical of the lack of reference in Highways England's correspondence to how it worked with the police in cases like this one where there was an overlap of jurisdictions. The ICA upheld the complaint and recommended that:

- the £355 charges should be waived
- Highways England should review its complaints policy in light of his comments about joint responses and apologise for its poor initial responses to the correspondence, and
- Highways England should cooperate with any police investigation triggered by Mr AB complaining about the advice he had been given.

### **A complaint about a motorway diversion through a small village**

**Complaint:** Mr AB complained after ‘smart motorway’ work between motorway junctions caused traffic to be diverted through his small village in the evenings and nights. He felt that the attitude of Highways England and its contractor towards residents had been poor, and undertakings to reduce the impact had not been delivered. He complained that: he had needed to make numerous complaints to get action taken, particularly concerning signage; signs had been removed or had stopped working; consultation and information provided had been poor; and Highways England staff had not been easy to contact and had shown a disregard for the villagers.

**Highways England response:** Highways England’s contractor engaged in protracted correspondence with Mr AB and his wife, explaining when, why and how works were occurring and repeatedly offering to meet. The work of the contractor and the police to ensure safety was explained, as was the contact the contractor had initiated with the parish council. Highways England also set out the measures its agent had taken to lessen the impact of the diversion and to work closely with partner agencies

**ICA outcome:** The ICA found that Mr AB had needed to liaise repeatedly to get signage working. However, he found ample evidence of multi-agency working and co-operation, and considered that Highways England had met the requirements of its Licence of Operation and, in terms of its administration, the Ombudsman’s Principles. He concluded that both Highways England and the contractor could have been clearer with Mr AB about the operational limitations they apply to the use of signage; and might have monitored its effectiveness more closely so he was not having to prompt them to recharge and repair. On that aspect of the complaint, the ICA recommended that Highways England should apologise.

### **Poor handling of a complaint followed by better practice**

**Complaint:** Mr AB complained that the hard shoulder of a Managed Motorway had not been opened to relieve congestion.

**Highways England response:** Highways England had initially responded with some incorrect information, but had subsequently apologised and provided a full explanation.

**ICA outcome:** The ICA said the first two responses from Highways England had been incorrect, but he commended the actions taken subsequently. He said an that apology should be offered by the chief executive, and that the CEO consider the



advice given to staff about the complaint scheme as it was clear that some staff dealing with complaints were not familiar with the ICA arrangements.

### **The relationship between Highways England's complaints system and the responsibilities of the firms with whom it contracts**

**Complaint:** Mr AB complained about road works that had over-run and which he considered to be unsafe.

**Highways England response:** Highways England had responded to a series of points Mr AB had made. It acknowledged that not all aspects of the scheme had been handled as well as they should.

**ICA outcome:** The ICA took the view that technical questions concerning the scheme were outside his remit and competence. However, while aspects of Highways England's engagement with Mr AB reflected very well, there had been some failures in complaint handling and one response from the agent was particularly misleading. The ICA did not believe there was a case for compensation or a consolatory payment. But he recommended that the chief executive review the relationship between feedback to contractors and Highways England's own complaints system, and that a copy of his report should also be shared with the agent.

#### **(ii): Maritime and Coastguard Agency**

5.4 We received just four MCA cases this year. One case was partially upheld; the others were not upheld.

5.5 Reflecting the MCA's responsibilities, much of the content of those cases we do receive is very technical in its nature. We are careful not to presume to expertise in these cases that neither of us possess.

### **A diver who felt that the Receiver of Wreck had triggered aggressive and unfair police action in relation to undeclared wreck**

**Complaint:** Mr AB complained that the Receiver of Wreck (RoW) misled the police in order to obtain a warrant to search his home for evidence of undeclared wreck. He contrasted the warrant application with the requirements of the Police and Criminal Evidence Act and argued that an interview under caution would have been professional and proportionate. He felt that this was part of an anti-diver orientation of the RoW's aimed at obtaining publicity. He accused RoW staff of giving incorrect or incomplete information to the magistrate and police. Mr AB, who had been told by the police that they had been misinformed by the RoW, initially took steps to sue but subsequently dropped his legal case.

**Agency response:** Before and after legal action was underway, the MCA addressed Mr AB's criticisms robustly, arguing that the police were responsible for the warrant application and had misled Mr AB by blaming the Agency for its contents. In any

event, the Agency believed that the wreck that Mr AB had registered all along – which he claimed would have obviated the search – was not the wreck they were looking for. The Agency remained strongly of the view that its investigation had been appropriate.

**ICA outcome:** The ICA judged that the evidential and technical aspects of the case rendered it unsuitable for substantive ICA review. He invited further comments from the Agency in response to Mr AB's areas of concern and referred them to him in his review. He did not conclude that the Agency's handling of the case represented maladministration.

### **Safety on a cruise ship**

**Complaint:** Mr AB raised safety concerns in respect of a cruise ship. He said the questions he had put to the MCA had been unanswered, there had been maladministration and discourtesy.

**Agency response:** The MCA said it had made enquiries of the cruise operator, and two audits had been carried out as a consequence that had found the ship to be compliant with international regulations.

**ICA outcome:** The ICA identified no maladministration, bias or discourtesy. The two audits were a proportionate response to the matters Mr AB had raised. There was no case for enforcement action. However, the review had shown that not all MCA staff were properly familiar with the Agency's complaints procedure.

### **An application for Officer of the Watch Certificate of Competency from a UK-based foreign national**

**Complaint:** Mr AB complained about the regulations governing applications for Officer of the Watch Certificate of Competency, arguing that they discriminated against UK-based foreign nationals like himself. He also criticised the MCA response to his grievance.

**Agency response:** The MCA said the policy was long-standing and had been subject to a full consultation.

**ICA outcome:** The ICA said that the Agency's policies were not within his remit. There was no suggestion that the MCA had misinterpreted or misapplied the relevant MSN (Merchant Shipping Notice). The ICA said that he was concerned by Mr AB's allegation of discrimination, and suggested that the MCA might benefit from wider learning on equality impact assessments (although he made no formal recommendation on this score). He also criticised aspects of the MCA's responses to Mr AB's complaint. Seeking a restorative outcome that would best assist Mr AB in his objective of re-starting his seafaring career in the UK, the ICA recommended that the MCA organise a telephone conversation with Mr AB when he was next in the UK to discuss his options for gaining the qualifications required. The ICA passed on Mr AB's contact details to enable this to happen.

### **(iii): HS2 Ltd**

5.6 We received just one complaint regarding HS2 Ltd this year. We are conscious that the number of complaints may rise significantly as and when actual construction work gets under way.

#### **Sympathetic handling of concerns arising from a dispute between an overseas investor and a land banking company that had bought land near the proposed route**

**Complaint:** Mr AB, who lives in South East Asia, had bought three plots of land through a land banking company in 2009. He complained that following HS2 Ltd's 2013 notification to landowners of the possibility of land acquisition, the company had accepted at face value a power of attorney from the land bankers claiming to allow them to act as the landowner in all dealings with HS2 Ltd concerning the plots. Mr AB also highlighted apparent contradictions in HS2 Ltd's handling of his case.

**HS2 Ltd response:** HS2 Ltd agreed that in future it would liaise direct with Mr AB but then in later correspondence stated that, based on a re-reading of his communications, it would liaise only with the land banking company and its lawyers. In further correspondence this issue was clarified and HS2 Ltd apologised and agreed once again to liaise direct with Mr AB in future. It said that there had been no other correspondence since 2013 apart from that which had been sent to him as a landowner when it had initiated contact in relation to the land.

**ICA outcome:** The ICA found that by far the greatest measure of responsibility for the risks that Mr AB had taken on in acquiring the land resided with him. The ICA considered it was unreasonable for Mr AB to expect HS2 Ltd to undertake an in-depth legal investigation into a document that had formed part of a contract he had signed with the land banker. The ICA agreed with Mr AB that some aspects of HS2 Ltd's communications had been contradictory: he judged that these had been recognised, clarified and apologised for. The ICA did not judge that any hardship or loss had occurred in relation to these minor inconsistencies.

The ICA found that, if anything, HS2 Ltd had exceeded its responsibilities in the way that it had communicated with both Mr AB and lawyers acting for the land banking company. He regarded it as perfectly reasonable for HS2 Ltd to state that it would seek further assurance about the power of attorney in the event that substantive decisions were to be made about land acquisition: none had been to date. The ICA could not provide the legal ruling Mr AB sought on the power of attorney. On an administrative level, he judged HS2 Ltd's handling of the case perfectly reasonable and could not see that any hardship or injustice flowed to Mr AB from it. He did not uphold the complaint.

## Appendix

### TERMS OF REFERENCE FOR THE DEPARTMENT FOR TRANSPORT'S INDEPENDENT COMPLAINT ASSESSORS

#### 1. Introduction

The Independent Complaints Assessors (ICAs) provide independent reviews of complaints about the services delivered by:

- (i) the central Department for Transport (DfT(C));
- (ii) the Department for Transport's (DfT's) executive agencies; and
- (iii) other bodies reporting to the DfT.

In this document, references to a 'DfT body' may refer to any of the above.

This guidance sets out the operational expectations for the ICA role and will, subject to annual review, apply for the duration of the current ICAs' terms of appointment. Any changes in the interim will be subject to agreement between the Department for Transport, the DfT bodies and the ICAs.

#### 2. Referral and review process

(i) The scope of the ICA scheme is defined by an agreed protocol which is annexed to this guidance (the "protocol").

(ii) The DfT body will inform people of the option of requesting an ICA review through the general information it provides about its complaints procedure and in its final response to each complaint. The DfT body will ensure that the complainant is aware of the ICA jurisdiction and of the fact that the complainant must request a referral within 6 months of the agency's final response.

(iii) A complaint case will usually be referred to the ICAs when the complainant requests this after the DfT body's final response has been provided. However, in some circumstances the DfT body may decide to expedite the process. A standard referral form for DfT body use is annexed to this guidance (the "referral form"). From time to time, a DfT body may ask for an ICA review or for ICA advice where this has not been requested by the complainant. In cases where an ICA has offered advice prior to the conclusion of the DfT body's handling of a case or cases, the ICAs will ensure that every step is taken to ensure a fresh review should the case then progress to ICA stage.

The DfT body will aim to pass a completed referral form and timeline on the complaint, together with the case papers, to the ICA as soon as possible and no later than within 15 working days of being asked to refer a case to the ICA.

(iv) The ICA will acknowledge receipt of a referral to the DfT body and complainant within 5 working days.

(v) The ICA will decide the extent to which any part of a complaint case within the ICA jurisdiction should be reviewed after taking into consideration the information and documents supplied by the DfT body and any other information s/he judges relevant. In so doing the ICA will keep in mind the public interest.

Factors relevant to this determination include:

*Against a detailed review*

- The DfT body has conducted a proportionate and reasonable investigation of the complaint and has found no administrative failure or mistake
- The essence of the complaint is the complainant's objection to the content and/or the outcome of DfT body policy or legislation
- It would be disproportionate for the ICA to review a complaint in detail, given its nature, seriousness and the potential outcome of a review.

*For a detailed review*

- The complainant has, or may have, suffered significant injustice, loss or hardship due to the matters complained about
- The DfT body's handling of the complaint has been poor, for example it has failed to undertake a proportionate and reasonable investigation; and/or has failed to apply an appropriate remedy
- The DfT body has asked the ICA to review the case
- An ICA review may assist in a wider process of organisational learning from the complaint and/or of promoting consistency and fairness.

(vi) During the review the ICA may raise queries concerning the complaint history or the policy or legal background to the matter and the DfT body will endeavour to answer these to her/his satisfaction. The ICA will go on to review the complaint and set out his/her conclusion as to whether the DfT body has acted in a fair and unbiased manner and has followed its complaints procedures correctly. This is mainly done by considering documents and seeking answers to written questions. An ICA only interviews witnesses exceptionally where there is good cause and should discuss this beforehand with the DfT body (and the DfT if appropriate).

(vii) An ICA may seek advice and/or a peer review from another ICA if she or he feels it is appropriate to do so in the circumstances of a particular case.

(viii) The ICA will submit a draft review to the DfT body for it to check for accuracy. This is not primarily for the DfT body to comment on the ICA's conclusions and recommendations but if the DfT body anticipates it will be difficult to accept and/or implement the ICA's recommendations then it may convey its objections at this

stage.

(ix) The review will provide the ICA's findings and conclusions (with the reasons for these) as to:

- any key facts in dispute
- the extent to which the complaint was justified
- where any part of the complaint is upheld, any recommendation to put it right
- any recommendation or suggestion for improving the handling of complaints or the matter complained of.

(x) Exceptionally, the ICA may decide that a draft report (or part of this) should be issued to the complainant and to the DfT body for all parties to have an opportunity to provide their representations on it before it is finalised.

### **3. Remedies**

(i) The ICA is at liberty to recommend that the DfT body remedy the cause of any complaint found to be upheld by:

- the making of an apology
- the giving of more information and/or explanation
- other remedial action
- the reimbursement of evidenced expenses reasonably and necessary incurred resulting from the matter complained of
- the payment of other evidenced financial losses
- the making of a consolatory payment, if this is proportionate and necessary, to reflect the inconvenience, injustice, hardship or delay experienced by the complainant as a result of the DfT body's mistake or failure.

(ii) When making any recommendation for any financial payment, the ICA will have regard to the DfT body's policy, relevant Treasury Guidelines (currently *Managing Public Money*) and the Ombudsman's *Principles for Remedy*.

(iii) In suggesting any remedy, the ICA will have in mind the impact and seriousness of any poor service or maladministration on the complainant and the appropriate steps, if available, to restore the complainant to the position they would have been in had the poor service or maladministration not occurred. The ICA will also take into account any act or omission on the part of the complainant that might reasonably be regarded as contributing to the hardship or losses under consideration or exacerbating their effects.

(iv) Where a DfT body does not agree to implement a recommendation it should inform the ICA in the first instance at draft report stage. If any difference of opinion cannot be resolved to both parties' satisfaction the DfT body should inform the complainant and the ICA in writing after the final report has been

issued, giving its reasons for not implementing the recommendation.

(v) In every case the DfT body should send to the ICA a copy of the letter which it sends to the complainant setting out its response to the final report and to any recommendations which the ICA has made.

(vi) The DfT body should also send the relevant ICA a copy of any draft Ombudsman report which comments on that ICA's handling of a case and the final Ombudsman report into that case.

#### **4. Confidentiality/information handling**

(i) The DfT body will inform all complainants of the following regarding their personal information before it submits their cases to the ICA;

##### ***Your personal information***

When you make a complaint to a DfT body, your personal information will be used by that DfT body, and where appropriate by the Department for Transport and their appointed Independent Complaints Assessors, for the purposes of handling your complaint, producing anonymised statistical information and seeking to improve services through lessons learnt. Further information about how each DfT body or the Department for Transport look after personal information can be found in the Department's information charter (available on the DfT website).

(ii) The DfT body will provide the ICA with all documents and information which it holds relevant to each complaint case so that an effective review can take place. In order to conduct a review the ICA may occasionally require access to material which is sensitive for example because it is confidential, legally privileged or commercially sensitive. Where the DfT body has informed the ICA of the sensitive status of such material then the ICA is not permitted to disclose it or any part of it outside the DfT body or Department for Transport (central department) without the prior consent of the DfT body .

(iii) All documents and information provided to an ICA must be handled in keeping with the Department's and DfT body's requirements for the lawful protection of information, especially personal information.

(iv) Any requests made directly to an ICA for access to information under the provisions of the Freedom of Information or Data Protection Acts will be passed immediately to the relevant DfT body or to the Department, together with any relevant documents or information to which the request may relate.

(v) The report issued by the ICA to the complainant (and any representative such as an MP) and to the DfT body shall be copied to the Department, if requested. It is not issued on a confidential basis.

(vi) After a period of fifteen months has expired since the conclusion of a review or the issue of the ICA's Annual Report including the case (whichever is the later) the ICA will arrange for the secure destruction of all relevant case documents they hold; and the Department will be responsible for the destruction of any documents stored centrally.

## 5. Reporting by ICAs

(i) The ICAs will report annually to the Department no later than 1 July each year on complaints cases handled in the previous year ending 31 March. The report will include:

- how many complaints cases have been referred to the ICAs for review
- how many complaints have been upheld, partially or fully
- what recommendations and suggestions, if any, have been made to DfT bodies
- what recommendations and suggestions, if any, the ICAs have for the improvement and better performance of the DfT bodies' complaints procedures and their role
- any other matter which the ICAs consider should be brought to the attention of the Department.

(ii) Each DfT body will be invited to check a draft of the report for the accuracy of the respective parts dealing with its cases.

(iii) The Department will publish the ICAs' Annual Report and its response to it on its website when finalised.

(iv) Quarterly summary reports will also be produced by the ICAs to an agreed format. These will also be provided to the DfT bodies in draft form before submission to the DfT.

## 6. Target timescales

(i) Target timescales for the scheme are set out below.

DfT body to provide ICA with completed referral and all supporting documents	15 working days of receipt of request for an ICA review
ICA to acknowledge referral to complainant and DfT body and to inform complainant and DfT body of proposed timescale for review	5 working days from receipt of completed referral
DfT body to answer queries raised by ICA	15 working days of receipt of query



DfT body to respond to draft ICA report	10 working days of receipt of draft
ICA to issue final report to DfT body and complainant	5 working days from response to draft report and within three calendar months of initial referral.

(ii) If an ICA expects that annual leave, illness or other absence from work will result in a failure to meet these targets then s/he will inform the agencies and DfT, in advance if possible and practicable.

## 7. Diversity

It is agreed that the scheme should be as widely accessible as possible to all sectors of the community, in the same way that the Department for Transport's services are. Accordingly, if at the time of making a referral the DfT body considers the complainant has any disability which may affect the ICA's usual way of communicating with the complainant and vice versa then it will report this to the ICA.

## **ANNEX A: ICA PROTOCOL**

Information to be made available by agencies to complainants at or before the final DfT body complaint response.

### **Stage 4<sup>14</sup>**

You can ask us to pass your complaint to the Independent Complaints Assessor (ICA) if you've been through stage 3 and aren't happy with the response.

The ICA is:

- independent of DfT and [insert name of DfT body ]
- not a civil servant

The ICA looks at whether we have:

- handled your complaint appropriately
- given you a reasonable decision

It doesn't cost you anything to have your complaint assessed by the ICA.

The ICA will need to see all the letters and emails between us. We aim to send this to them within 15 working days of you asking us to pass your complaint to them.

The ICA will decide how best to deal with your case and will then contact you.

The ICA will aim to review your case within 3 months. They'll tell you if they expect it to take longer.

When the ICA has completed their review they'll contact you with their findings and any recommendations they consider appropriate to both you and us. This ends their involvement with your case.

The ICA can look at complaints about:

- bias or discrimination
- unfair treatment
- poor or misleading advice
- failure to give information\*
- mistakes
- unreasonable delays
- inappropriate staff behaviour

\*Apart from requests for information where the Freedom of Information Act, the Data Protection Act or the Environmental Information Regulations apply.

---

<sup>14</sup> This is stage 3 in respect of complaints to Highways England and the MCA. ICA referral is also Stage 3 of the maladministration complaints process for DfT-C.

The ICA can't look at complaints about:

- government, departmental or DfT body policy
- matters where only a court, tribunal or other body can decide the outcome
- legal proceedings that have already started and will decide the outcome
- an ongoing investigation or enquiry
- the handling of requests for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004
- the handling of Subject Access Requests made under the Data Protection Act
- personnel and disciplinary decisions or actions
- the exercise of professional judgment by a specialist, including, for example, the clinical decisions of doctors.

An ICA cannot usually look at any complaint that:

- has not completed all stages of our complaints process
- is more than 6 months old from the date of the final response from us

If your complaint falls within either of these categories please explain why you believe it should be reviewed on an exceptional basis by an ICA. The DfT body will send your explanation with your complaint to the ICA.

An ICA cannot look at any complaint that has been, or is being, investigated by the Parliamentary and Health Service Ombudsman.

## ANNEX B: REFERRAL FORM FOR DFT BODY COMPLETION

### ICA review referral form

---

Notes:

1. BOXES 6-10: if letters or emails set these points out clearly and succinctly then they may be attached to the form instead of completing the box(es).
2. A timeline of all correspondence/actions should be attached to this form.

<b>1. DfT body &amp; contact details</b>	
<b>2. Name of complainant</b>	
<b>3. Address</b>	
<b>4. Email address and telephone if known</b>	
<b>5. Date complaint made and by what means</b>	
<b>6. Summary of complaint</b> (attach letter/email if appropriate)	
<b>7. Date of DfT body's initial response to complaint</b>	
<b>8. Summary of initial response</b> (attach letter/email if appropriate)	
<b>9. Date of DfT body's final response to complaint</b>	
<b>10. Summary of final response to complaint</b> (attach letter/email if appropriate)	

11. What redress, if any, has been offered to the complainant (eg apology, reimbursement of	
12. Date of request for ICA review (attach letter/email if appropriate)	
13. Does the DfT body know if a complaint has been made to the PHSO?	
14. Is the complainant's request for ICA review late? If so, does the DfT body think the ICA should waive the time bar?	
15. Does the complaint concern systems or processes which have since changed or will change in the near future?	
Date:	Person making referral (if different from email)

**Any other comments:**